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PARDEEP SHARMA

v.

CHIEF ADMINISTRATOR HARYANA URBAN DEV.
AUTHORITY & ANR.

B

(Civil Appeal Nos. 52-53 of 2016)

JANUARY 07, 2016

[T.S. THAKUR, CJI. AND R. BANUMATHI, J.]

C

Consumer Protection Act, 1986 – Allotment of plot – Non-delivery of possession of plot to appellant on account of failure to deposit the balance amount – Complaint by appellant before the District Forum seeking possession of plot from respondent-Development Authority – During pendency, complainant accepted the refund of the amount deposited by him towards price of the plot – However, said fact not brought to the notice of District Forum –

D

Direction by District Forum to respondent to re-allot the same plot to complainant on the same price – Appeal by respondent – During pendency of the appeal, execution petition by complainant allowed and in compliance thereof physical possession of the plot handed over to the complainant – State Commission allowed the appeal holding that the complainant cannot claim the possession of the plot allotted to him since it had accepted the refund amount of 10% after voluntarily surrendering the plot and as such the complainant was no longer a consumer – Said order upheld by National Commission – Review application also dismissed – On appeal, held:

E

Since the appellant had deposited the then cost of the plot way back in 2009 and other facts and circumstances and in the interest of justice, issuance of direction to respondents to permit the appellant to retain the plot subject to the condition that the appellant would pay the cost of plot at Rs.10,500/- per sq. mtr. after adjusting the amount already deposited by him – During the pendency of the matter before the State Commission, Estate Officer in pursuance of the order passed in Execution Petition and by a letter regularized the allotment of the plot and handed over the possession to the appellant – Issuance of direction to respondent-Authority to proceed against the delinquent officials/officers responsible for the lapses in accordance with law.

F

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 52-53 of 2016. A

From the Judgment and Order dated 19.07.2011 and 29.09.2011 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 671 of 2011 and Review Application No. 142/2011 in Revision Petition No. 671 of 2011 respectively. B

S. R. Singh, Vibhut Sushant Gupta, Dr. Kailash Chand, for the Appellant.

Samar Vijay Singh, Dr. Monika Gusain, Manoj Sheoran, P. D. Sharma for the Respondents. C

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. These appeals are filed assailing the orders dated 19.07.2011 and 29.09.2011 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'National Commission') dismissing the Revision Petition No.671/2011 and also the Review Application No.142/2011, thereby confirming the order dated 02.12.2010 passed by the State Consumer Disputes Redressal Commission, Haryana (for short 'State Commission') whereby it was observed that the appellant-complainant having accepted the refund amount of 10% and was no longer a consumer and has no *locus standi* to seek possession of the plot allotted to him. D E

3. Brief facts which led to the filing of these appeals are as follows:- The appellant/complainant was allotted a plot bearing No.1048 in Sector 64, Faridabad measuring 250 sq. yds. vide Memo No. 399 dated 01.01.2001 at the rate of Rs.1,865/- per sq. yd. The appellant along with the application form had deposited 10% as earnest money and 15% of the sale consideration was deposited on 22.01.2001. Balance amount of 75% of the total cost was to be deposited by the appellant in six yearly equal instalments with 15% interest per annum to Haryana Urban Development Authority (for short 'HUDA'). HUDA issued the demand notice to the appellant calling upon him to pay a sum of Rs.59,782.50 vide Memo No.38698 dated 04.10.2002 on account of enhancement of the cost of the plot, which as per the terms of allotment they have right to do so. The appellant has failed to deposit the said amount and hence the possession of the plot was not delivered to him. F G H

- A Alleging that there was deficiency on the part of HUDA for not delivering the possession, the appellant filed a complaint before the District Consumer Disputes Redressal Forum, Faridabad (for short 'District Forum') praying for issuance of direction to HUDA to hand over the possession of the plot by adjusting the amount already deposited. During
- B the pendency of the said complaint before the District Forum, the amount deposited by the appellant towards price of the plot was refunded to and accepted by the appellant. The fact that the appellant had taken refund was however not brought to the notice of the District Forum which
- C passed the award on 19.12.2005. The District Forum vide Order dated 19.12.2005 allowed the complaint and directed the respondents to re-allot the same plot to the appellant on the same price and hand over the possession of the same to him. The District Forum ordered that the amount already paid by the appellant to be adjusted against price of the plot now to be allotted to the appellant as per the order. Additionally, respondents were also directed to pay Rs.50,000/- on account of mental agony, harassment and damages and also Rs.5,000/- on account of
- D litigation expenses.

4. Aggrieved by the said order, HUDA filed appeal bearing No.708/2006 before the State Commission. When the appeal was pending before the State Commission, the appellant filed execution petition and in compliance of the order dated 02.09.2009 by the District Forum in

E Execution Petition No.504 dated 12.05.2006, physical possession was handed over to the appellant. The State Commission vide order dated 02.12.2010 allowed the appeal and thereby set aside the award passed by the District Forum observing that the respondent/complainant cannot claim any relief with respect to the plot voluntarily surrendered by him and the District Forum erred in accepting the complaint. The State

F Commission further held that the complainant having accepted the refund amount of 10% after surrendering the plot, the respondent/complainant was no longer a consumer. As against the order passed by the State Commission, appellant preferred revision before the National Commission and the same was dismissed by the impugned order dated 19.07.2011.

G The review application No.142/2011 filed by the appellant also came to be dismissed by another order dated 29.09.2011, which is also now under challenge.

5. Mr. S.R. Singh, learned Senior Counsel for the appellant submitted that the State Commission and the National Commission erred

H in not taking into consideration that the appellant has already deposited

the total of sale consideration and that he obtained DPC completion certificate after construction as per the sanctioned building plan. It was submitted that the action of HUDA for cancellation of the allotment of the plot and refund of the amount deposited by the appellant was without providing any reasonable opportunity of hearing to the appellant which was totally arbitrary and that the District Forum rightly passed the award directing re-allotment of the plot at the same rate and the State Commission and National Commission ought not to have interfered with the same. A B

6. Learned counsel for the respondents submitted that in compliance of the order dated 02.09.2009 passed by the District Forum in Execution Petition No. 504 dated 12.05.2006, physical possession of the plot was handed over to the appellant. Learned counsel for the respondents further submitted that having accepted refund of the amount, the appellant was no longer a consumer and cannot seek for allotment of plot and the State Commission and the National Commission rightly reversed the award passed by the District Forum. C D

7. We have carefully considered the rival submissions advanced by both the parties and perused the impugned orders and material on record.

8. As noticed above that even while the matter was pending before the State Commission in appeal, the Estate Officer of the respondent-authority in pursuance of the order passed by the District Forum in Execution Petition No.504 and by letter dated 15.04.2008 regularized the allotment of the plot and handed over the possession thereof to the appellant. Possession was actually delivered to the appellant on 07.10.2009. Taking note of these facts, by order dated 01.11.2013, this Court has directed the respondent-authority to hold an inquiry and identify the person(s) responsible for issuing orders/certificates like regularization, delivery of possession etc. We may usefully refer to the relevant part of the order dated 01.11.2013 which reads as under:- E F

“We have heard learned counsel for the parties at some length. In the ordinary course, we would have, in the light of the affidavit filed by the respondent-Authority, disposed of the matter with a suitable direction regarding payment of the extension of fee by the petitioner. What dissuades us from doing so is the fact that consequent upon the order passed by the District Consumer Forum and while the matter was still pending before the State Commission H

A in appeal, the Estate Officer of the respondent-Authority had by
letter dated 15th April, 2008 regularised the allotment of the plot
and offered the possession thereof to the petitioner. This order, it
appears, was passed either in ignorance of the fact that the HUDA
had challenged the order passed by the District Consumer Forum
or in deliberate suppression of the same. In the ordinary course if
B HUDA had assailed the order passed by the District Consumer
Forum, there was no question of the Estate Officer going ahead
with regularization of the allotment or delivering possession of the
plot-in-question. Not only that we find that the possession was
actually delivered to the petitioner on 7th October, 2009 and a “no
C encumbrance certificate” issued on 9th August, 2013 while the
matter was pending before the State Commission. Building plan
for the proposed construction was sanctioned on 21st September,
2010. All this happened while the proceedings before the State
Commission were pending to which respondent-HUDA was a
party. The State Commission eventually set aside the order passed
D by the District Consumer Forum on 2nd December, 2010. Even
so the respondent-HUDA issued a DPC Certificate on 20th
December, 2010, no matter the order passed by the District
Consumer Forum directing regularised/re-allotment and possession
had already been set aside by the State Commission.

E We are told by learned counsel for the petitioner that construction
over the plot-in-question has since been completed. We however
fail to appreciate how despite orders passed by the State
Commission and that passed by the National Commission, the
petitioner was granted a regularisation certificate, given possession
F of the plot, issued a “no encumbrance certificate”, granted a DPC
certificate and given sanction for the construction of the proposed
building. It is obvious that utter confusion and lack of
communication prevails within HUDA for one section does not
appear to be knowing what the other section is doing which does
not speak well about the working of the Authority. At any rate,
G before we pass any further direction in the matter we deem it just
and proper to direct that the Chief Administrator, HUDA, shall
hold an inquiry into the circumstances in which the developments,
mentioned above, have taken place and also identify the persons
responsible for issuing orders and certificates like regularisation,
H delivery of possession, “no encumbrance certificate”, DPC

certificate and sanction of the building plans for the construction of the proposed building, despite the orders passed by the State Commission and that passed by the National Commission. The inquiry shall be expedited and a report to this Court submitted as early as possible but not later than four months from the date of receipt of a copy of this order.” A

9. In spite of the above order, there was delay in conducting inquiry and also taking action against the officials of the HUDA responsible for dereliction of duties. By order dated 17.11.2015, this Court has directed the Chief Administrator, HUDA to be present in the Court and also to file the response. Thereafter, HUDA has filed its response on 19.11.2015 indicating the names of the officials responsible for lapses in this case and also the status of action taken and we are of the view that the action taken against erring officials are to be taken to their logical conclusion. B C

10. On behalf of the appellant, it was submitted that the appellant is a retired government official and that before obtaining no dues certificates from the respondent-authority, the appellant has deposited a sum of Rs.6,79,557/- and that after obtaining actual physical possession, the appellant has spent his hard earned money and also substantial part of his retiral benefits in putting up the construction and that the appellant be permitted to retain the plot and the building constructed over the plot in question. It was also submitted that by so permitting the appellant to retain the plot, HUDA may not loose in any manner. To substantiate the contention that the appellant has put up the construction, photographs were also filed by the appellant which shows that only finishing work is to be completed. D E

11. Considering the facts and circumstances of the case and that the appellant has put up substantial construction, we directed the respondent-authority to file rate of the plot in Sector-64 at various point of time so as to consider the claim of the appellant to permit him to retain the plot in question with the construction thereon. Pursuant to the order dated 19.11.2015, the respondent-authority has filed its affidavit, relevant part of which is extracted herein below:- F

“(1) It is submitted that the present circle rate of Sector-64 in which the disputed plot is situated is fixed @ Rs. 22,000/- per sq. mtrs. for the year 2014-15. G

(2) That the last allotment in Sector-64, Faridabad was made @ Rs. 6200/- per sq. mtrs. in the year 2010. H

A (3) That the current rate and circle rate of Sector-2 & 65, Faridabad (which are in the vicinity of Sector-64) is as under:-

	Sector	Current HUDA Rate (per sq.mtr.)	Circle Rate (per sq.mtr.)
	2	Rs. 15,500/-	Rs. 22,000/-
B	65	Rs. 12,000/-	Rs. 22,000/-

(4) That the year-wise rates of allotment of Sector-64 are as under:-

	Year	HUDA Rate (per sq. yard)
	2001	Rs.2718/-including enhanced compensation.
C	2005	Rs. 2718/- including enhanced compensation.

That the rate for the year 2010 was Rs. 6200/- per sq. mtrs. and after the year 2010, the rate was not finalized till the year 2014-15, hence the deponent is not in position to intimate the rate of the year 2011. Moreover it is submitted that the rate of the year 2014-15 is Rs. 10500/- per sq. mtr.”

D Considering the fact that the appellant has deposited the then cost of the plot way back in 2009 and other facts and circumstances and in the interest of justice, we direct HUDA to permit the appellant to retain the plot subject to the condition that the appellant pays the cost of plot at the prevailing HUDA rate i.e. Rs.10,500/- per sq. mtr.

E 12. The impugned orders passed by the National Commission are set aside and these appeals are allowed. Respondent-authority/ HUDA shall permit the appellant to retain the plot subject to the appellant's depositing the amount at the current HUDA rate of the year 2014-15 i.e. Rs.10,500/- per sq. mtr. after adjusting the amount already deposited by the appellant. The appellant shall deposit the said amount within four months from the date of this judgment and on such deposit, HUDA shall execute the necessary document and issue no objection certificate and clearances as may be required within four weeks thereafter. It is further directed that the respondent-authority shall proceed against the delinquent officials/officers who are responsible for the lapses in accordance with law. In so far as action taken in the disciplinary proceedings, the respondent-authority shall file compliance report before this Court within nine months. In the facts and circumstances of the case, we make no order as to costs.

H Nidhi Jain

Appeals allowed.