

**Chief Administrator, Haryana Urban Development Authority and Another Vs. Mrs. Manjit Kaur**

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**Court :** Union Territory Consumer Disputes Redressal Commission UT Chandigarh

**Decided On :** Oct-30-2001

**Judge :** K.K. SRIVASTAVA, PRESIDENT & THE HONOURABLE MRS. DEVINDERJIT DHATT, MEMBE

**Appeal No. :** Appeal No. 267 of 2001

**Appellant :** Chief Administrator, Haryana Urban Development Authority and Another

**Respondent :** Mrs. Manjit Kaur

**Judgement :**

K.K. Srivastava, President:

1. This appeal is directed against order dated 2.7.2001 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as the District Forum-II) in Complaint Case No. 253 of 1997.

2. There is a delay of 14 days in filing the appeal and the appellant has moved an application seeking condonation of delay which has not been opposed by Mr. Anil Kumar, Authorised Representative of the respondent, Mrs. Manjit Kaur. Consequently, the delay in filing the appeal is condoned and the appeal is taken on board for hearing on merit.

3. The learned Counsel for the appellants as well as Authorised Representative of the respondent, Mr. Anil Kumar made a joint statement that this appeal be heard on merit today itself and it is on the request made by the learned Counsel for the appellants and the Authorised Representative of the respondent that we have taken this appeal for hearing. The record of the complaint case was summoned from the District Forum-II. The District Forum-II allowed the complaint filed by the respondent/complainant with cost of Rs. 1,100/- and the appellants/O.Ps. were directed to refund the amount of Rs. 25,000/- with interest @ 12% from 15.5.1996 till refund.

4. A perusal of the file of the complaint case shows that the respondent/complainant filed the complaint on the allegations that the appellants, Chief Administrator, HUDA and the Estate Officer, HUDA, Sonapat were not developing the site and were not giving the possession to her of the plot No. 2366-P, Sector 23, Sonapat which had been allotted to her vide letter dated 13.8.1991. She had approached the appellants with the request to accept the surrender of the plot allotted to her and prayed for refund of the amount deposited by her. It appears that the respondent/complainant had deposited a sum of Rs. 23,020/- along with the application for allotment and subsequently deposited a sum of Rs. 40,258/- on 11.9.1991 to make the deposit of th of the price of the aforesaid plot. The remaining amount of the price of the plot i.e. 3/4th was to be paid by way of 6 annual instalments of each of Rs. 32,000/-. One such instalment of Rs. 32,000/- was paid by the respondent on 25.9.1992. It was, thereafter that the complainant became disinterested in retaining the plot as HUDA was whiling away time and was not developing the site of the plot and thereby delaying the delivery of the possession.

5. It is undisputed that the appellants refunded the amount to the complainant after deducting a sum of Rs. 25,000/-. A sum of Rs. 25,000/- was allegedly forfeited by HUDA. The complainant approached the appellants/O.Ps. and made a request for the payment of the aforesaid amount of Rs. 25,000/- to her and when she was unable to get the refund of the amount of Rs. 25,000/-, then she filed the complaint. The O.Ps. of the complaint case i.e. Chief Administrator, HUDA and Estate Officer, HUDA, Sonapat filed reply through the Estate Officer, Sonapat and took a plea that the development work in Sector 23, Sonapat was at an advanced stage except for the area of 380 acres for which some more time was required. The deduction of the amount of Rs. 25,000/- was defended. The District Forum-II held in Para 5 of its order, inter alia, as under :

The point that calls for decision is, whether the O.P. is justified in forfeiting the said amount of Rs. 25,000/-. We have already noticed that the present situation has come to occur because of the deficiency in service on the part of the O.P. in developing the area within the reasonable time of allotment. Thus, the O.P. wants to take premium of deficiency in service on its part and at the same time it is causing loss to the complainant...

6. The District Forum-II duly noticed letter dated 14.12.1995 vide which the Chief Administrator, HUDA issued a communication to all the Administrators/Estate Officers of HUDA to allow surrender of residential plots after forfeiting 10% of the total amount of consideration. However, the forfeiture would not be in cases where HUDA was unable to deliver possession of the plots due to litigation pending in Court, non-availability of the plot at the actual site as per layout and the land being under the unauthorised encroachment making HUDA unable to deliver the possession and finally where an allottee could not pay the remaining amount or could not undertake construction on account of death of the dependent of the house. In the instant case the appellants/O.Ps. were unable to deliver the possession of the plot to the complainant as the development work could not be completed in the said area. The District Forum-II placed reliance on the decision rendered in III (1997) CPJ 508=1997 (2) CPC 421, Estate Officer, HUDA v. Dev Dutt Gandhi, and 1998 (2) CPC 35, Estate Officer, Haryana Urban Development Authority v. Shri Sanjay Garg.

7. On behalf of the appellants reliance was placed on the judgment of the Honble Supreme Court rendered in HUDA and Anr. v. Kewal Krishan Goel and Ors., AIR 1996 SC 1981. In the case of Huda and Anr. v. Kewal Krishan Goel and Ors. (supra), the plot was surrendered as the allottees were not in a position to pay the balance instalments of the price of the plot. The fault, thus lie on the part of the allottees, whereas in the instant case, the allottee/respondent-complainant is not at fault and it is the HUDA, who is at fault in not being able to develop the site where the plot in question is situated and to deliver possession to the complainant/allottee within a reasonable time. The allotment was made way back on 13.8.1991. The complaint was filed in the year 1997 and the complainant applied for refund of the amount in the year 1996.

8. In the case of Estate Officer, Haryana Urban Development Authority v. Shri Sanjay Garg (supra), this Commission upheld the order of the District Forum which allowed the refund of the amount deposited with interest @ 18% and held that there was no development in the Sector in question either at the time of the proceedings or at the time of conclusion. The said case also related to Sonapat.

9. The other decision relied on by the District Forum-II, Estate Officer, HUDA v. Dev Dutt Gandhi (supra) also pertains to allotment of a plot at Sonapat. The allotment was made in 1991. The possession could not be delivered even after 5 years due to non-development of the area by HUDA. The finding of the District Forum holding HUDA guilty of deficient services and directing HUDA to refund deposited amount with interest @ 18% p.a. was held just and valid and the appeal was dismissed. In the judgment rendered in the case of HUDA and Anr. v. R.K. Goel, SLP (Civil) No. 3324/1997 decided on 24.10.1997, it may be mentioned that a Division Bench of the Honble High Court of Punjab and Haryana allowed the surrender of plot and allowed interest @ 18% p.a. from the date of deposit. The surrender of the plot was allowed by the High Court on the ground that even after 5 years of allotment, development work was incomplete and possession was not delivered. The High Court allowed refund of the entire amount deposited with interest. SLP filed against the order of the Division Bench of the Punjab and Haryana High Court was dismissed by the Honble Supreme Court, however, reduced the rate of interest awarded by the Punjab and Haryana High Court from 18% p.a. to 10% p.a.

10. We find that the District Forum-II was right in allowing the complaint and to order for the refund of Rs. 25,000/- from 15.5.1996 till refund. The District Forum-II allowed interest @ 12% p.a. It is undoubtedly true that in R.K. Goels case the Honble Apex Court has reduced the rate of interest to 10% but in a subsequent decision in the case of Haryana Urban Development Authority v. Sh. Rajnish Chander Sharda, III (2000) CPJ 8 (SC)=VII (2000) SLT 142=2000 (1) CPC 259, a larger Bench of the Honble Apex Court upheld the award of interest by the Honble National Commission @ 18%.

11. In view of the foregoing discussion, we are of the considered opinion that there is no force in this appeal and the order of the District Forum-II in awarding interest @ 12% p.a. appears to be just and valid in the light of the decision of the Honble Supreme Court in the case of HUDA v. Sh. Rajnish Chander Sharda (supra). Resultantly, the appeal is dismissed with no order as to costs.

Copy of the judgment be supplied to the parties free of charges.

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