

Surender Kumar Singhal Vs. Shimla Development Authority and

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Court : Monopolies and Restrictive Trade Practices Commission MRTPC

Decided On : Mar-11-1997

Reported in : (1998)1CompLJ359MRTPC

Judge : S Ali, S Chakravarthy

Appellant : Surender Kumar Singhal

Respondent : Shimla Development Authority and

Advocate for Def. : Shri. Ujwal Banerjee

Judgement :

1. This shall dispose of the notice of enquiry (NOE) issued by the Commission on November 28, 1994, under Section 10(a)(i) read with Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969, charging Shimla Development Authority (now rechristened as Himachal Pradesh Nagar Vikas Pradhikaran) and the chief executive officer-cum-chief engineer of the said authority (hereinafter referred to as "R-1 and R-2") of having indulged in certain restrictive trade practices as well as unfair trade practices within the meaning of the provisions of Section 2(o)(ii) and Section 36A of the Act. This enquiry commenced with an application moved by Shri Surender Kumar Singhal (hereinafter referred to as "the complainant") under Section 10(a)(i) and Section 36B(a) of the Act alleging that the respondents have perpetrated certain restrictive and unfair trade practices to the detriment of the interest of the complainant and to the detriment of public interest. A summary of the complaint of Shri Surender Kumar Singhal and the notice of enquiry is given

hereinbelow : 1. Shimla Development Authority (respondent No. 1) is a Government of Himachal Pradesh undertaking constituted under the Himachal Pradesh Town and Country Planning Act, 1977, and is, inter alia, engaged in the business of development, construction and making available housing facilities to citizens within the Shimla region.

Respondent No. 2 is the chief executive of respondent No. 1 for implementing its schemes.

2. The respondent authority floated and advertised a self-financing scheme for a residential complex to be constructed in Kasumpti zone of New Shimla. The scheme is known as the second self-financing scheme for residential complex.

3. The respondent authority invited applications for different categories of flats/houses and plots.

4. The respondents made certain representations to attract potential consumers. The representations highlighted that the residential complex proposed to be constructed would be prestigious and modern with 2,500 flats and 800 houses, that it will be commanding "excellent scenic panorama", that the houses/flats will have ample open space, that it will be proximate to the Secretariat of the Government, school and commercial complex, that there will be a convenient shopping centre, parks, etc., that the buildings will be on the pattern of "beautiful Himalayan architecture", that there will be assured maintenance of common facilities, services, etc.

5. The representations included a reference to the likelihood of the completion of the complex by December, 1988.

6. The brochure of the respondent authority mentions that the cost of flats, houses and plots is tentative and that respondent No, 1 reserves the right to increase the same depending upon the actual cost of construction, escalation in cost of land, material, labour or any other reasons.

7. The complainant lured by and relying on the representations of the respondents registered for allotment of type-D independent house at a cost of Rs. 3,57,000.

The applicant deposited an amount of Rs. 53,550 towards earnest money.

8. The respondent authority acknowledged the receipt of the registration of the application of the complainant and of the earnest money deposited through its letter dated August 16, 1986. In the same letter a hint was given of some "unavoidable delay" in the implementation of the scheme, the problem being attributed to acquisition and taking possession of the land.

9. A further communication dated November 8, 1986, was received from the respondents by the complainant that he was allotted a type-D independent house stipulating the payment of nine instalments commencing December 9, 1986, and ending December 9, 1988.

10. It was also made clear that default in payment of instalments would attract interest at 18 per cent. per annum.

11. When the complainant wrote a letter to respondent No. 2 on November 22, 1986, seeking information on the status of the scheme and on the expected date of possession of the house, the said respondent replied that the possession of the house was likely to be given within two and a half years of the date of allotment, "if work progresses as per schedule without any hindrances". This was on February 4, 1987.

12. As the progress of the scheme was not encouraging, the complainant sought refund of the amount deposited by him along with interest. To this a reply was received from respondent No. 2 that the construction of the complex had already been taken up and was likely to be completed as per schedule. This was on February 28, 1987.

15. The respondents demanded the payment of the first instalment of Rs. 35,700 in their letter dated February 17, 1987. The complainant, however, reiterated his request for the refund of the amount already deposited by him.

14. After some more correspondence the complainant issued a legal notice on June 30, 1987, seeking refund of the amounts already deposited by him with interest. The respondents' reply to the legal notice was that the residential complex

was in progress and was likely to be completed within the scheduled time, if there was no hindrance beyond its control.

15. The respondents informed the complainant on August 26, 1987, that in terms of para 7(d) of the brochure relating to the scheme, he would be refunded the amounts already paid without interest deducting 50 per cent. of the earnest money, as he has cancelled his registration.

16. Upon this, the complainant paid three instalments. The complainant, however, made it clear that he would like to receive assurance from respondent No. 2 that the scheme would be implemented and that he would be entitled to possession. This was on October 7, 1987. Subsequently, on June 15, 1988, the complainant tendered payment of the fourth instalment of Rs. 35,700. Four more instalments aggregating to Rs. 1,42,800 were also paid by the complainant on June 23, 1989. With all these payments, only the last instalment of 5 per cent. was due to be paid at the time of possession.

17. Respondent No. 2, through its letter dated February 26, 1990, demanded the final instalment, upon which the complainant tendered that payment also. While doing so, the complainant informed the respondents that the delay in handing over possession of the house beyond December, 1988, will be liable to be compensated towards interest/damages.

18. One more payment was made of Rs. 17,850 on May 11, 1994, which took the aggregate payment by the complainant to Rs. 3,74,850, more than the original cost of Rs. 3,57,000.

19. On November 6, 1991, the complainant was advised by the respondents that the price of the house had been enhanced from Rs. 3,57,000 to Rs. 6,59,176. Thus the respondents "with one stroke of pen and in an autocratic and high-handed manner increased the price of the house by Rs. 3.02 lakhs amounting to increase of about 100 per cent. The respondents demanded that the enhanced cost on account of escalation in the cost of land, labour and material be paid.

Furthermore, the respondents offered four alternatives for making the payment of the enhanced amount, one of the options being withdrawal from the scheme with the respondent authority offering the refund of the amount deposited by the applicant with interest at 15 per cent. per annum compounded yearly up to November 30, 1991, without forfeiting the earnest money as per the original scheme.

20. Thereupon the respondents on May 29, 1992, informed the complainant of draw of lots and also solicited his preference for a particular row of house. The complainant indicated his preference for an independent house in row No. 1 in his letter dated June 24, 1992, the last date of receiving communication of preference being June 27, 1992.

21. Respondent No. 2 communicated through his letter dated July 17, 1992, that the complainant has been allotted house No. 13 in row No. II. 22. The complainant protested upon the said allotment and requested that possession of the house already delayed by more than 42 months from December, 1988, be given.

23. Ignoring this fact that the complainant has already made 100 per cent. payment of all the instalments by March 14, 1990, the respondents issued a demand letter of date December 17, 1992, for an amount of Rs. 51,480 which included the ninth instalment of Rs. 17,850 (which had already been paid) and also interest on various instalments. This was once again protested by the complainant in his letter dated July 9, 1993, that the entire cost of the house had already been paid and stating further that there was delay on the part of the respondents in handing over possession.

24. The complainant's understanding is that the house in question was not ready even at that point of time because the respondent authority had addressed a letter to the Executive Engineer on April 7, 1994, and May 28, 1994, to ensure completion of the house. The said letters were well after the letter of the respondents of date December 17, 1992, in which the respondents had categorically stated that "the house is ready for handing over possession", 25. Respondent No. 2 sent a communication to the complainant on August 26, 1993, increasing the demand amount further to Rs. 66,742 including the ninth instalment

which had already been paid.

26. This drew a further protest from the complainant in the form of his letter dated September 15, 1993.

27. The complainant received a further letter from the respondents of date November 8, 1993, seeking payment of a further amount of Rs. 8,550 towards the enhancement of land compensation by the District Judge, Shimla.

28. The next communication of date January 18, 1994, from the respondents increased the amount demanded to Rs. 67,813 inclusive of the ninth instalment already deposited by the complainant.

29. The complainant, after once again raising a strong protest, opted to pay the demanded amount of Rs, 67,813 subject to the confirmation that the allotted house is ready and possession will be handed over to him.

30. On May 30, 1994, the complainant paid Rs. 17,850 stating that this amount has already been deposited by him as the last instalment in 1990 itself. He further complained to the respondent authority that the house was not ready even in April, 1994, that it was only half built and was under "improper use" of the junior engineer for storing of various building materials etc.

31. The respondents thereupon addressed a letter to the complainant stating that if an amount of Rs. 69,152 is paid by June 9, 1994, the possession of the house would be given.

32. The coup de grace occurred on July 7, 1994, when the respondents through a letter addressed to the complainant sought a further amount which according to the complainant aggregated to Rs. 9,11,297 inclusive of the amounts already paid by him. The amount so demanded has been in spite of the respondents' fault in delaying the construction when the complainant had made more than 100 per cent.

payment of the originally booked amount. Demanding ground rent not envisaged in the brochure of the scheme originally, requiring the complainant to pay the

revised cost and compelling the complainant to accept possession of the house in an "as is where is basis" are all unjustified according to the complainant.

33. Thus the respondents firstly by delaying possession of the house for five years, secondly by taking 100 per cent. of the cost of the house up to the year 1990, thirdly by burdening the complainant with enhancement of cost even for the period subsequent to the date the respondents were supposed to hand over the possession of the house and finally arbitrarily and unreasonably enhancing the cost of the house from Rs. 3,57,000 to Rs. 9,11,297 with a threat to cancel the allotment which "smacks not only of monopolistic arrogance but exploitative stance of public authority" have committed unfair trade practices attracting the provisions of Section 36A of the Act and also restrictive trade practices attracting the provisions of Section 2(o)(ii) of the Act, as the trade practices indulged in by the respondents have imposed unjustified costs on the complainant.

2. The complainant has prayed that an enquiry may be instituted and a cease and desist order passed against the respondents besides injuncting them from indulging in the prohibited trade practices.

3. An interim injunction was granted by the Commission against the respondents from giving effect to their letter dated July 7, 1994, carrying the threat of cancellation of allotment of the house in question. The respondents furnished their replies both to the complaint application of Shri Surinder Kumar Singhal and the notice of enquiry.

The replies are summarised together for convenience hereinbelow ; (a) The respondent authority is a statutory authority bound by the provisions of the Himachal Pradesh Town and Country Planning Act, 1977, and is required to carry out its affairs and functions in accordance with that Act and Rules framed thereunder. It cannot be drawn into litigation under the Monopolies and Restrictive Trade Practices Act, 1969.

(b) The respondent authority has not committed any prohibited trade practice under the Monopolies and Restrictive Trade Practices Act, 1969.

(c) The respondent authority is not engaged in any trade or carrying on of any business.

2. The respondent has not made any profit out of acquisition of land, its development and construction of houses/flats. On the other hand, it "has had to face huge deficits". The schemes of the respondents are for the benefit of all classes of society and in the interest of public.

3. The scheme in question introduced in February, 1986, could not be completed in time for "numerous unforeseen reasons". The hilly area is extremely difficult to develop. Vagaries of weather, availability of technical know-how, technical labour, sophisticated and mechanical machinery and equipment, etc., played an important part in causing delay in the finalisation and completion of the scheme.

The time frame for the scheme, therefore, had to be extended.

4. After the land was acquired, the land owners moved the court of the District Judge for enhancement of compensation received by them under Section 18 of the Land Acquisition Act. The matters in some cases had gone right up to the Supreme Court and compensation had been enhanced which had to be paid by the respondent authority.

5. In para 4 of the brochure it had been laid down very clearly right at the outset, that the cost of the land, independent houses and flats is tentative and that the respondent authority reserves its right to increase the same depending upon the actual cost of construction, escalation in cost of land, material, labour or any other reason. It has also been made very clear in the brochure that the complex was likely to be completed by December, 1988, and that flats would be made available within one ye'ar.

6. It was only in the month of July, 1994, that the flats/houses were ready for being offered for possession. It was then that the final cost of flats/house was worked out. The final cost includes the escalation in cost of land, escalation in cost of material, labour and other charges.

7. There has been delay on the part of the complainant to deposit the amount due and it is for this reason, possession had to be withheld. On the other hand, a large number of allottees who have deposited the amounts according to the schedule have taken possession of houses.

8. There is a cost committee consisting of the chief executive officer-cum-chief engineer of the respondent authority, Joint Secretary (Finance) Government of Himachal Pradesh, and Commissioner-cum-Secretary, Public Works Department, Government of Himachal Pradesh, to finalise the cost of the houses taking into consideration the escalation in the cost of land and of construction. When the respondent authority issued a letter to the complainant seeking his preference for a house or a row, the latter intimated his option but did not deposit the amount of the cost or the preference amount, as required.

9. The respondent authority did not make any representation that the cost of the type-D independent house will be only Rs. 3,57,000. On the other hand, the brochure and the advertisements in the press specifically mention that the cost is only tentative and that the respondent authority reserves its right to increase the same upon actuals. Furthermore, it was held out that the complex was likely to be completed by December 1988, and efforts were made to adhere to the time schedule but there was an overrun on time because of various technical difficulties.

10. The right to a house arises only on the communication of the letter of allotment and, therefore, the price or rates prevalent on the date of such communication is applicable. In case, the complainant is not willing to accept the allotment at such rate, it is always open to him to decline the allotment. There is no unfairness in this procedure.

4. After the pleadings were completed, the following issues were framed ; 1. Whether the respondents are or have been indulging in restrictive trade practices as indicated in the notice of enquiry 2. If the answer to the foregoing issue is in the affirmative, whether the restrictive trade practices are not prejudicial to public interest 5. At this stage, after hearing both the parties an interim direction was given by the Commission that on the complainant depositing an amount of Rs. 1

lakh and paying the monthly instalments of Rs. 4,667 commencing from April 1, 1995, the respondent authority should deliver possession of the house to the complainant. This was on March 22, 1995.

This was challenged in appeal to the Supreme Court of India, which through its order dated August 11, 1995, set aside the interim direction of the Commission and further directed that the Commission should hear the enquiry matter on the merits. It was also directed by the Supreme Court that it shall be open to the respondents herein to raise the question relating to maintainability of the complaint before us.

6. Both the sides filed their affidavits in evidence. We gave a hearing to Shri O. P. Dua, counsel for the complainant, and Shri Ujwal Banerjee, counsel for the respondents.

7. In line with the direction of the Supreme Court, we requested counsel for the respondents to advance his arguments first on the issue of maintainability of the enquiry. Shri Ujwal Banerjee, counsel for the respondents, essentially stated that in terms of Section 3 of the Monopolies and Restrictive Trade Practices Act, the Act shall not apply to any undertaking owned or controlled by the Government or an undertaking owned or controlled by a Corporation established by or under any Central, Provincial or State Act. He added that in terms of the said section, the Monopolies and Restrictive Trade Practices Act will not apply to the respondent authority unless the Central Government by notification makes the Act applicable to such undertakings.

8. Shri O. P. Dua, counsel for the complainant, drew our attention to a notification issued by the Central Government under Section 3 of the Act. The said notification bears the number G.S.R. 605(E), dated September 27, 1991, of the Department of Company Affairs, Ministry of Law, Justice and Company Affairs. The said notification was published in the Gazette of India (Extraordinary), Part II on September 27, 1991.

In terms of the said notification, the Central Government has directed that the Monopolies and Restrictive Trade Practices Act shall apply to certain under-

takings including those which are owned or controlled by the Government or an undertaking owned or controlled by a Corporation established by or under any Central, Provincial or State Act. It is admitted that the respondent authority has been established under the Himachal Pradesh Town and Country Planning Act, 1977. In terms of the aforesaid notification of the Central Government of date September 27, 1991, the Monopolies and Restrictive Trade Practices Act, squarely covers the respondent authority which consequently falls within the ambit of the Monopolies and Restrictive Trade Practices Commission. The issue relating to the maintainability of the enquiry is, therefore, decided against the respondents. The Monopolies and Restrictive Trade Practices Act is applicable in the instant enquiry.

9. The other objections of the respondents namely that they have not indulged in any trade practice much less a restrictive or unfair trade practice have no force, as the Explanation to Section 2(r) of the Act states that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of "service".

Section 2(r) itself defines "service" and thus the Explanation attached to the said definition section brings all real estate dealings within the ambit of "service" and thus within the purview of the Monopolies and Restrictive Trade Practices Act and the Commission, Here we would like to add that Section 2(s) of the Act which defines "trade" includes the provision of any services. Inasmuch as the definition of "service" includes real estate dealings, the service rendered by the respondents squarely falls within the definition of "trade" and thus the definition of "trade practice" in Sections 2(s) and 2(u) of the Act.

10. Before proceeding to adjudicate on the charges in the notice of enquiry, it is desirable to mention at this stage that the original complaint petition of the complainant has the prayer that the Commission may pass an order against the respondents of "cease and desist" from indulging in the prohibited trade practices contained therein. The other prayer is that the respondents should be enjoined from withholding possession and from cancellation of allotment of the house for non-payment of enhanced consideration, etc. In the rejoinder filed by the

complainant, he has sought compensation for the delay in the construction and handing over of possession of the house including interest on the deposits already made by him. Thus reading the complaint petition and the rejoinder together it appears to us that this is a kind of composite application for enquiry and compensation.

Normally compensation applications have to be filed under Section 12B of the Act following a particular procedure of affidavit, etc. In the instant case, as the complaint application itself makes the prayer, albeit indirectly for possession of the house and the rejoinder makes a prayer for compensation, we treat this complaint application of Shri S.K. Singhal, as a composite application for enquiry and compensation.

11. Now we proceed to analyse the controversy in question. Essentially the controversy revolves, round the original representation of the respondents that the house would be completed in a particular time frame, and the dishonouring of the same by the consequent delay on the part of the respondents to complete the construction of the complex and delay to offer possession and enhancing the price of the house.

12. Both Shri O. P. Dua, counsel for the complainant, and Shri Ujwal Banerjee, counsel for the respondents, referred to a Supreme Court judgment in Delhi Development Authority v. Pushpendra Kumar Jain (Civil Appeal No. 6205 of 1994, dated September 23, 1994 ; [1994] 6 JT 292), in support of their arguments. Interestingly this judgment of the Supreme Court was referred to by the respondents in their reply to the notice of enquiry but at the stage of arguments it was Shri O. P. Dua, counsel for the complainant, who relied on the judgment.

13. It is the case of counsel for the respondents that the ratio of the judgment of the Supreme Court in Delhi Development Authority v. Pushpendra Kumar Jain [1994] 6 JT 292, that mere drawal of lots cannot vest an indefeasible right in the allottee for allotment at the price obtaining on the date of drawal of the lots is applicable to the instant case. As the right to the house or flat arises only on the communication of the letter of allotment, the price or rate prevailing on the date of such communication is applicable. Shri Ujwal Banerjee, counsel for the

respondents, further argued that if the complainant is not willing to take or accept the allotment at the revised rate, it is always open to him to decline the allotment.

14. Shri O. P. Dua, counsel for the complainant, relied on the same ratio outlined by the Supreme Court and observed that the allotment of a house was communicated to the complainant through a letter of the respondents dated November 8, 1986. A perusal of the said letter shows that the complainant was informed by the respondents that he was allotted an independent house type-D in the scheme in question. Counsel for the respondents argued that this was not an allotment and that the allotment of a specific house occurred subsequently. He added that the letter of the respondents dated July 17, 1992, is the letter of allotment, inasmuch as consequent on the draw of lots held on July 7, 1992, the complainant was allotted a specific independent house No. 13, type-D in row No. II.15. A careful perusal of the record shows that the draw of lots was not to select a few allottees from the whole list of applicants in a situation where there were only a few houses available. This is borne testimony to by the letter of the respondents dated June 20, 1987, addressed to the complainant stating that the "necessity for draw of lots did not arise as total number of applicants under each category of houses/plots/flats were within the scope of proposed units in residential complex. Accordingly allotment letter dated November 9, 1986, was issued".

16. The above passage in the letter of the respondents clearly throws overboard, the contention of counsel for the respondents that the house was allotted only on July 17, 1992. Inasmuch as the respondents themselves have categorically admitted in their letter dated June 20, 1987, that the allotment letter of November, 1986, had already been issued and that there was no necessity for draw of lots, we agree with counsel for the complainant that the allotment letter was issued in November, 1986, itself.

17. This, therefore, brings us to the conclusion that if the drawal of lots was not to select a few allottees among a list of allottees for a few houses, the applicability of the Supreme Court's judgment in the Delhi Development Authority's case [1994] 6 JT 292, will not arise at all. In that case, on a perusal of the entire judgment, it is clear that there was a draw of lots for selection of the applicants. In para 8 of the

said judgment this is what their Lordships have observed : "Since DDA is a public authority and because the number of applicants are always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, method, a process to identify the allottee, i.e., it is a process of selection." 18. The ratio in that case, namely, that the price prevalent on the date of communication of the letter of allotment after the drawal of lots has no application in the instant case. The drawal of lots in the instant case was not to determine whether the complainant would get a house but what house the complainant would get. In other words he is already assured of allotment of a house but not of a particular house.

Furthermore, we are fortified in our conclusion by noting that the respondents made an offer to the complainant to make the choice of a house or choice of a row, which implies that he is entitled to a house in any case but that he will be notified of the particular house after completing the formalities. In this view of the matter there is no need for us to go into the question as to whether the price at the time of draw of allotment on July 7, 1992, is applicable or not.

19. This, however, leaves the larger question open as to whether the enhancement in the price of the house is justified and whether there has been delay in the construction of houses by the respondents.

20. It is admitted by the respondents that there has been an overrun, both in the period of construction and the price of houses in the complex. Shri O. P. Dua cited two rulings in support of the case of the complainant. The first relates to an order of this Commission in Major General Baldev Kumar (Retd.) v. Ghaziabad Development Authority (C. A.No. 172 of 1994, dated 29-12-1995). It is worthwhile reproducing the relevant extract from that order.

21. In Brijesh Mehta and Poonam Mehta v. Ghaziabad Development Authority (C. A. No. 342 of 1993, dated 16-6-1995), this Commission in its order dated June 16, 1995, squarely indicted the respondent for having indulged in unfair trade practice falling under Section 36A of the Monopolies and Restrictive Trade Practices Act. We reproduce hereinbelow the operative portion of the said order : "The laches on the part of the respondent to complete its scheme within a reasonable period

cannot be allowed to visit the applicants with adverse consequences. We, therefore, hold that the respondent by delaying the development of the plot and by not delivering possession of the plot till date has indulged in the restrictive trade practice of imposing costs and restrictions on the applicants.

In so far as the allegation of unfair trade practice is concerned, the laches and omissions on the part of the respondent to stick to any reasonable time-frame were sought by the respondent's counsel to be viewed with some understanding as in its representations in the brochure and in its letter dated November 5, 1989, the respondent has indicated only its expectation. We, however, take a serious note of the fact that the so-called expectation has become too long in time and is even bordering on an open ended time frame. It does not redound to the credit of a Government enterprise like the respondent to delay matters of this type unconscionably to the detriment of the applicants in particular and of other similarly placed persons in general. Therefore, we are inclined to indict the respondent for having indulged in unfair trade practice under Section 36A of the Monopolies and Restrictive Trade Practices Act." 22. In arriving at the said conclusion in the cited order, reliance was placed on an earlier order of this Commission in *Raj Bala Gupta v. Ghaziabad Development Authority* (RTPE No. 36 of 1992) wherein it was observed that the respondent's earnest desire to complete the development as early as possible cannot be a legal answer to its failure or omission to make available the plots to the registrants within a reasonable time and that even if there is no evidence of any intentional delay on the part of the respondent, that cannot be an answer to a complainant's right to seek an order from the Commission under the Monopolies and Restrictive Trade Practices Act or to claim compensation for undue delay on the part of the respondent to honour its commitment.

23. We are entirely in agreement with the observations and rulings in the said two cases. There is no doubt whatsoever that the respondent has indulged in unfair trade practices falling under Section 36A of the Act and also restrictive trade practices falling under Section 2(o) of the Act. These prohibited trade practices indulged in by the respondent are clearly prejudicial to public interest and in particular to the interest of the applicant.

24. The second case cited by Shri O. P. Dua is Prakash Dhawan v. Estate Officer, HUDA [1996] CPJ 20 (NC). In this case, the National Commission did not agree with the HUDA regarding its justification for the additional price of the alternative site and agreed with the appellants in the case. But what prompted the National Commission to decide in favour of the appellants therein, was that an alternative plot was offered after the appellants had paid for the original plot more than five years before the allotment of the alternative plot. That case perhaps is not on all fours with this case because there is no alternative plot allotted in the latter. However, Major General Baldev Kumar (Retd.) v. Ghazidbad Development Authority (C. A. No. 172 of 1994, dated 29-12-1995) cited by Shri Dua, counsel for the complainant, which is an order of this Commission applies in full force as there has been an unconscionable delay on the part of the respondents.

25. Counsel for the respondents, however, argued forcefully that the delay in construction was due to hilly terrain, difficulty in getting technical and skilled experts to work in the difficult region and the litigation surrounding land acquisition. These adverse factors certainly had a large role in delaying the construction. However, we cannot fail to note that from the date of initial registration in 1986 up to the year 1994, there is a gap of eight years and the so-called expectation of handing over of possession by December, 1988, as held out by the respondents did not materialise and the long gap of six years from December, 1988, up to July, 1994 (when the houses were supposed to be ready for possession) is not excusable in the interest of the allottees and in public interest.

26. There is no doubt that the complainant has suffered loss and damages because of the delay caused in the construction of the houses in the complex and the delay in handing over of the possession of the house. The complainant has thus suffered an idle investment of his hard earned savings. Till the date of arguments, possession had not been given.

27. Shri Ujwal Banerjee, counsel for the respondents, cited an order of the Supreme Court in Shimla Development Authority v. Asha Rani (C. A.No. 4388 of 1996, dated 26-2-1996) in which the apex court has held that the allottee has to bear the burden of not only the escalation in construction cost but also of the

escalation in the value of the land when the court enhances compensation under the provisions of the Land Acquisition Act at various stages. He drew our attention to the notes under para 4 of the scheme in the brochure and observed that the respondent authority has reserved its right to increase the cost of flats, independent houses and plots depending upon the actual cost of construction, escalation in cost of land, material, labour or any other reasons. Furthermore, he added that the cost of the flats and houses is tentative and this also has been mentioned very clearly in the representation made in the brochure. We agree with the respondents that the representations made regarding prices in the brochure carry such mention about the escalation in the cost of the house. But nevertheless because of enormous delay in the period of construction there has been an inevitable increase in the cost of material, labour, etc., which has enhanced the price of the house by more than 100 per cent. While the respondent authority has a justification in collecting the enhanced land compensation consequent on the court judgments under the Land Acquisition Act from the allottees, it does not stand to reason that when there is unconscionable delay in the period of construction with the attendant considerable increase in the cost of construction, the complainant and similarly placed allottees should be asked to bear that burden as well.

28. Taking a total view of the matter, we are of the view that because of the delay in the period of construction of the house in the complex and the consequent increase in the cost of construction itself there has been an unfairness on the part of the respondents vis-a-vis their original representation in the brochure attracting the provisions of Section 36A of the Act. Inasmuch as the trade practice on the part of the respondents has also resulted in unjustified costs on the allottees and in particular on the complainant, we further hold that the respondents have indulged in restrictive trade practices as well attracting Section 2(o)(ii) of the Act. Needless to add, the aforesaid trade practices have been detrimental to the interest of the complainant and public interest in general. The first issue posed by us is, therefore, answered in the affirmative against the respondents and the second issue is answered in the negative against the respondents.

29. We, therefore, direct the respondents not to indulge in the aforesaid unfair and restrictive trade practices and not repeat the same in future. The respondents shall file an affidavit of compliance within six weeks from the date of this order.

30. In so far as compensation is concerned, inasmuch as the complainant did not remit the enhanced amounts demanded particularly the enhancement relating to the increase in the land acquisition compensation apportioned between the allottees, we are unable to direct the respondents to hand over possession of the house at the originally estimated price of Rs. 3,37,000. We consider it appropriate in equity and justice to direct the respondents to refund the total amount deposited by the complainant with interest at 18 per cent. per annum from the respective dates of deposit to the date of payment. The respondents shall also pay to the complainant the cost of this litigation which we assess at Rs. 5,000. In line with our interim order, dated March 22, 1995, the complainant had paid to the respondent authority an amount of Rs. 1 lakh. That amount was refunded by the respondent authority on our order of date March 21, 1996. Interest at 18 per cent. per annum shall be paid by the respondent authority to the complainant for the, period the same amount of Rs. 1 lakh was parked with the former. The aforesaid amounts shall be paid to the complainant by the respondent authority within six weeks from the date of this order and an affidavit of compliance filed within the same time frame.

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