

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA,
PANCHKULA.

First Appeal No. 2772 of 2006

Date of Institution: 4.12.2006

Date of Decision: 8/8/2008

Brij Bala Nandwani wife of Sh. Ashok Kumar Nandwani, Resident of House No.3265,
Sector 21-D, Chandigarh.

---Appellant (Complainant)

Versus

1. Haryana Urban Development Authority, Sector-6, Panchkula, through its
Chief Administrator.

2. The Estate Officer, Haryana Urban Development Authority, Gurgaon.

---Respondents (Opposite Parties)

BEFORE:

Hon'ble Mr. Justice R.S. Madan, President.
Dr. Rekha Sharma, Member.

For the Parties: Mrs. V.B. Sethi, Advocate for appellant.
Mr. Deepak Balyan, Advocate for respondents.

ORDER

Justice R.S. Madan, President:

The appellant (complainant) claims that she was allotted plot No.371 located in Sector-21, Gurgaon vide allotment letter No.2456 dated 8.11.1985. She had deposited the entire amount of instalments, but the possession of the plot could not be delivered to her due to the litigation pending in the Hon'ble High Court. However, an alternative plot No.320K in Sector-21, Gurgaon in lieu of the disputed plot was allotted to her on the same price but the possession was not delivered to the complainant. The District Forum while accepting the complaint, granted the following relief to the appellant (complainant) vide order dated 17.10.2006:-

- a) To offer possession of the alternative plot No.320K/21, Gurgaon or if not possible then to allot another alternative plot of the same size and on the same price, in the same Sector or in some equally developed adjoining Sector.
- b) To pay interest-compensation at the rate of 12% per annum on the amount deposited w.e.f. the date of deposit till offer of possession of alternative plot as directed above.
- c) Charge any interest or penalty on the amount of instalments or enhancement and if charged then to refund the same with 10% interest w.e.f. the date of deposit; and

- d) Also pay Rs.2000/- as costs of proceedings.
- e) The aforesaid compensation shall firstly be paid by the Ops to the complainant and then, it must be recovered from the erring employees of the Ops, after holding an enquiry under the departmental rules, under intimation to this Forum.

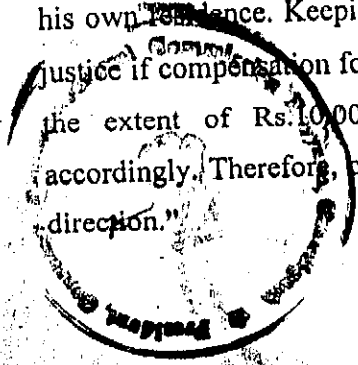
Let the order be complied with within one month from the date of communication of this order except direction (d) above for which the time period is six months."

Aggrieved by not granting of the compensation, the appellant (complainant) has knocked the door of this Commission in this appeal.

Heard.

Learned counsel for the appellant argued that the appellant who was allotted a plot in the year 1985, has not been given the possession of the plot till 2008 and as such is entitled to claim compensation with respect to the escalation of building/construction material from the year 1985 which the District Forum has not awarded to the appellant while accepting the complaint. In support of his arguments reliance was placed on the decision of the Hon'ble State Commission, U.T., Chandigarh in Complaint case No.79/1997(Hry)/68 of 2007, *Kanwar Rohit vs. Estate Officer, Haryana Urban Development Authority, Gurgaon and another*, decided on 5.7.2007 wherein similar controversy was involved and the following directions were given:-

"Therefore, keeping in view that complainant did not make efforts to start construction for six years after taking physical possession, although area was developed and started construction only in February, 2006 after getting site plan approved when National Commission had asked the State Commission to determine escalation in cost of construction at CPWD rates. It somehow gives impression that complainant maneuvered to get higher compensation at CPWD rates and for this purpose started construction in 2006 and he kept plot for speculative purpose and not for his own residence. Keeping in view this fact in mind, it will met ends of justice if compensation for escalation in cost of construction is awarded to the extent of Rs.10.00 lacs instead of Rs.13.15 lacs. We award accordingly. Therefore, complaint is disposed of in view of the aforesaid direction."



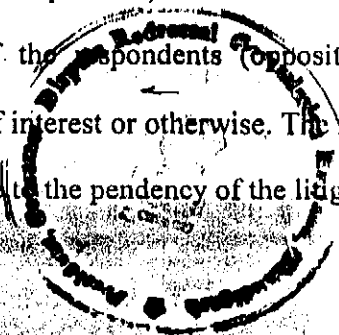
Thus, according to the learned counsel for the appellant, keeping in view the escalation in the cost of building/construction material, the appellant is entitled to the relief of compensation in this regard.

On the other hand learned counsel for the respondents argued that where the alternative site/plot has been offered or delivered at the old price and the reasons for not delivering the possession is justifiable, in that case the allottee is not entitled to any interest of compensation.

After hearing the learned counsel for the parties we are of the view that keeping in view the facts and circumstances of the case that the possession of the plot could not be delivered to the appellant as the matter was pending adjudication before the Hon'ble Punjab & Haryana High Court. This was the justifiable reasons for the respondents in not delivering the possession of the plot for which the letter of allotment was issued or the alternative site has been offered to the appellant at the old price of the year 1985. The price of the land have escalated in Gurgaon many fold which compensates the appellant even with respect to the escalated cost of construction of the building. This view further finds support from the judgment BANGALORE DEVELOPMENT AUTHORITY Versus SYNDICATE BANK, (2007) 6 Supreme Court Cases 711, wherein it has been held as under: -

"13. As already noticed, where the grievance is one of delay in delivery of possession, and the development authority delivers the house during the pendency of the complaint at the agreed price, and such delivery is accepted by the allottee complainant, the question of awarding any interest on the price paid by him from the date of deposit to date of delivery of possession, does not arise. The allottee who had the benefit of appreciation of price of the house, is not entitled to interest on the price paid."

The appellant (complainant) has failed to prove that there was deficiency of service on the part of the respondents (opposite parties) entitling the appellant to compensation by way of interest or otherwise. The respondents have proved the case for not allotting the plot due to the pendency of the litigation before the Hon'ble High Court.



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In this view of the matter the observations made in the case BANGALORE DEVELOPMENT AUTHORITY Versus SYNDICATE BANK (Supra) are fully applicable to the present case.

For the aforesaid reasons, there is no merit in this appeal. It is dismissed.

Announced: 28/8/2008

CS 24-26/28/8-8

Justice R.S. Madan, President

- 1. Case No. 2772/06
- 2. Date of Filing 28/8/08
- 3. 28/8/08
- 4. 1.9.08
- 5. Date of copy

Certified to be a true copy

Super State Redressal Commission Haryana, Chandigarh.

28/8/08

Dr. Rekha Sharma, Member

Signature with date

28/8/08