

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB,
CHANDIGARH**

First Appeal No.473 of 2017

Date of institution : 16.06.2017

Reserved on : 25.09.2017

Date of decision : 09.10.2017

1. Executive Officer, The Nawanshahr Improvement Trust, Nawanshahr, District Shaheed Bhagat Singh Nagar (Punjab).
2. Chairman, The Nawanshahr Improvement Trust, Nawanshahr, District Shaheed Bhagat Singh Nagar (Punjab).

....Appellants/Opposite Parties

Versus

Harjit Singh son of Jagat Singh, resident of House No.1548, Sector 69, SAS Nagar, Mohali.

....Respondent/Complainant

**First Appeal against the order dated
15.5.2017 of the District Consumer
Disputes Redressal Forum, Shaheed
Bhagat Singh Nagar.**

Quorum:-

**Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President
Mrs. Kiran Sibal, Member.**

Present:-

For the appellants : Shri Neeraj Sharma, Advocate.

For the respondent : Shri Ferry Sofat, Advocate.

JUSTICE PARAMJEET SINGH DHALIWAL, PRESIDENT

The instant appeal has been filed by the appellants/opposite parties against the order dated 15.5.2017 passed by District Consumer Disputes Redressal Forum, Shaheed Bhagat Singh Nagar (in short, "the District Forum"), whereby the complaint filed by Harjit Singh, respondent/complainant, under Section 12 of the Consumer Protection Act, 1986, was partly accepted and the

appellants/opposite parties were directed to return the original price of the plot to the complainant i.e. ₹7,92,000/- with interest @ 9% per annum from the date of last instalment deposited by him i.e. 22.5.2014 till realization along with ₹30,000/- for mental harassment and agony and ₹5,000/- as litigation expenses.

2. It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Forum.

Facts of the Complaint:

3. Brief facts, as averred in the complaint, are that the opposite parties floated a Scheme for residential plots in Rajiv Gandhi Nagar and invited applications for allotment of plots through draw of lots. In pursuance of the advertisement the complainant applied for a plot measuring 100 square yards and deposited a sum of ₹66,000/- as earnest money, vide draft No.975125 dated 10.12.2010. Plot No.3552 measuring 100 square yards was allotted to the complainant through draw of lots held on 30.6.2011 for a total price of ₹7,92,000/-. Immediately after allotment the complainant was asked to deposit 25% of the total price of the plot i.e. ₹1,15,500/- along with 4% cess of ₹29,040/- within 30 days from the date of issuance of allotment letter and the same was paid on 26.7.2011. Thereafter the complainant paid all the instalments as and when demanded by them. The Agreement to Sell/Form-D was executed between the complainant and the opposite parties. The complainant paid the entire price and the opposite parties issued "No Dues Certificate", vide letter No.133

dated 27.5.2014. After that the complainant visited the opposite parties many a times and requested to deliver the possession of the said plot but the same was not delivered. Whenever the complainant visited the spot it was noticed that there was no progress at the site and till the date of filing of the complaint the said site of plot was not connected with *Pucca* road. There were ditches of more than 15 feet deep. The land was like a *chappar* and there was no sewerage of rain water. Even the basic facilities like streetlight, green park, sewerage pipe and water supply were not there. As such, there is no possibility of delivery of physical possession and the same may take much more time. A period of five years has since been elapsed. The complainant met the J.E. to receive the demarcation of the site on 28.4.2016 and found that since there were ditches of more than 15 feet deep and even proper demarcation was not possible. The complainant has in fact paid a sum of ₹11,56,774/- to the opposite parties and filed the present complaint before the District Forum for the refund of the same along with interest @ 18% along with ₹5,00,000/-, as compensation for mental, physical and financial loss and ₹60,000/- for litigation costs.

Defence of the Opposite Parties:

4. Upon notice opposite parties appeared and filed joint reply taking preliminary objections to the effect that the complaint is not maintainable. There is willful default committed by the complainant. No notice has been served upon the opposite

parties for institution of the complaint. As per condition of policy, allottee was required to take the possession within 30 days from the allotment but the allottee did not approach the opposite parties and as such, it is deemed that possession of the plot had been taken by the allottee. Moreover, all the basic amenities like water supply, streetlight, pacca roads, park, sewerage and approach path are available on the spot. On merit, it was admitted that the complainant has purchased the plot and paid the entire price of the plot in question. Denying all other allegations made in the complaint a prayer for dismissal of the complaint was made.

Finding of the District Forum:

5. Both the sides produced evidence in support of their respective averments before the District Forum, which after going through the same and hearing learned counsel on their behalf, partly accepted the complaint, vide impugned order. Hence, this appeal.

6. We have heard learned counsel for both the sides and have carefully gone through the records of the case.

Contentions of the Parties:

7. It was vehemently argued by the learned counsel for the appellants/opposite parties that as per terms and conditions of the allotment letter, allottee was required to take the possession within 30 days from the allotment but the allottee did not approach the opposite parties and as such, the possession is deemed to have been delivered to him. Moreover, there exist basic amenities of

water supply, streetlight, pacca roads, park, sewerage and approach roads etc. on the spot. There is no delay in delivery of possession. The possession is ready and the complainant can take possession at any time. It was further argued that there is no provision with regard to refund of the amount and, as such, the District Forum instead of directing to refund the amount deposited by the complainant should have directed to deliver possession of the plot in question. In similar case pertaining to the same very scheme, the District Forum directed the opposite parties to deliver possession of the plot and further directed to provide all the basic amenities by 30.6.2016 and in case the remaining basic amenities are not provided or the possession not delivered by 30.6.2016 then the interest @ 8% per annum shall be paid from the date of deposit of amount. This Commission in FA No.264 of 2016 decided on 17.8.2016 (***Kamaldeep Bhuchhar @ Kanwal Deep Bhuchhar v. The Nawanshahr Improvement Trust***) arising out of the above said order declined the claim for refund of amount by observing that there is no provision in the allotment letter dated 30.6.2011 with regard to the refund of the amount. The District Forum has not followed the earlier orders/directions issued in the case of other allottees whereby the claim for refund of the amount has been specifically rejected. Thus, the order passed by the District Forum is illegal and erroneous and the same is liable to be set aside.

8. On the other hand, it was vehemently argued by the learned counsel for the complainant that the District Forum has passed a well reasoned order after duly appreciating the averments of the parties and the evidence on record in respect of those averments. Virtually there is no progress on the spot. It was further argued that the complainant had paid the entire price of the plot in question to the complainant and more than 6 years have since elapsed but the possession of the fully developed plot along with all the basic amenities has not been delivered so far. The complainant cannot be made to wait for an indefinite period for delivery of possession. Only oral averments have been made with regard to the providing of basic amenities on the spot. However, no evidence has been led to prove the same. There is no illegality or perversity in the order passed by the District Forum and the same is liable to be upheld. He relied upon following judgments in support of his contentions:-

- i) 2016(2) CLT 499 (NC) (***Major General Vikram Puri (Retd.) & Anr. v. Umang Realtech (P) Ltd. & Ors.***);
- ii) 2016(4) CLT 236 (NC) (***Pradeep Chowdhry and anr. v. Unitech Ltd. and anr.***);
- iii) 2015(2) CPR 540 (NC) (***M/s Utopia Projects Pvt. Ltd. v. Shahin BI Mulla***);
- iv) 2012(1) CPJ 225 (NC) (***Megacity Developers and Builders Ltd. and another v. Seetha Ratna K. Rao***);

- v) 2007(2) C.P.J. 267 (***Ghaziabad Development Authority, through its Secretary v. Col. R.N. Kalra***);
- vi) 2016(2) CLT 566 (U.T. State Commission) (***Amar Singh v. Unitech Limited and others***)
- vii) 2015(4) CPJ 91 (U.T. State Commission) (***Gurpreet Singh, Abhishek Lal v. Puma Realtors Private Limited and another***);
- viii) 2016 (1) CPJ 118 (Tamil Nadu State Commission) (***Mrs. S. Malathy v. M/s Metro City Foundation***); and
- ix) 2001(3) CPJ 377 (U.T. State Commission) (***The Chief Administrator, H.U.D.A. v. Smt. Sarla Rani***).

Consideration of Contentions:

9. Admittedly the complainant was allotted the plot in question under the said category, vide allotment letter dated 30.6.2011 Ex.C-5 and he had paid the entire price of the said plot. The possession was to be delivered within 30 days from the date of allotment along with all basic amenities. The basic amenities have not been provided so far. No document providing such amenities has been produced on record. The District Forum while allowing the complaint has observed in para no.10 of the impugned order as under:-

“10. We have sympathetically considered the respective version of both the party and find that the main stress of the OPs is on allotment letter Ex.C-5 but the OPs have miserably failed to establish on the file

that the said letter dated 30.06.2011, wherein in Para No.10 described that the possession is to be taken within 30 days from the date of allotment in writing, failing which it deemed that possession has been delivered. But this clause is relates to brochure Ex.C-3, wherein it is categorically mentioned that basic amenities like wide roads, car parking, park, street light and water/sewerage etc. will be provided but there is no evidence came on file whether these facilities have been provided in the locality, if so then possession cannot be delivered, no doubt OPs have placed on file some photographs but these photographs do not establish that the said photographs are of the said locality. Photographs do not show whether possession of the plot has been delivered to the complainant, but there is no sign of street light. There is no park or other amenities shown nor sewerage line and moreover the OPs himself wrote a letter dated 20.04.2016 Ex.OP-1 to one of the allottee-Kamaldeep Bhuchar that the possession be taken after demarcation from the Assistant Trust Engineer/J.E. and the OPs also wrote one letter Ex.OP-2, wherein it is categorically mentioned that basic amenities have been provided upto 30.6.2016 so it means that the delivery of possession as well as providing basic

amenities have to be handed over to the complainant and other allottee in the month of April 2016, whereas the allotment letter was given on 30.06.2011, so five years have been lapsed, neither the possession has been delivered to the allottee/complainant nor basic amenities are proved.”

We do not find anything wrong in the aforesaid finding of the District Forum.

10. Hon'ble National Commission in Pradeep Chowdhry's case (supra) has specifically held that flat should have been complete in all respects before possession was offered to the complainant and offering possession of the flat which is not complete in all respects, including the finishing work could not be held to be in conformity with the contractual obligation of the OP. In Shahin BI Mulla's case (supra) it has been held by the Hon'ble National Commission that if possession has not been given on the committed date, the purchaser of the said flat is empowered to seek refund of the amount paid with interest and compensation. In Col. R.N. Kalra's case (supra) it has been held by the Hon'ble National Commission that it cannot be intention of public authority to force a consumer to take possession of an incomplete constructed house in undeveloped area and offer of possession itself appears to be ill-conceived. In Major General Vikram Puri's case (supra) the refund with interest has been ordered by the Hon'ble National Commission on account of delay in handing over possession. U.T.

State Consumer Disputes Redressal Commission, Chandigarh, in Puma Realtors Private Limited's case (supra) where development and amenities were incomplete at the time of offering possession has specifically held that possession cannot be said to be valid and legal possession and ordered refund with compensation, litigation cost and compound interest on deposited amount. Similar view has been taken in the other two judgments by the respective State Commissions. In the present case, no documentary evidence has been produced on record by the opposite parties to prove that all the basic amenities have been provided at the spot. Therefore, if for the sake of arguments, it is presumed that offer of possession was deemed, the same was a paper possession for want of basic amenities.

11. So far as the judgment of this Commission in Kamaldeep Bhuchar's case (supra) relied upon by the learned counsel for the opposite parties is concerned, the same is not applicable in view of the aforesaid judgments of Hon'ble National Commission, more particularly, when there is no prayer of the complainant in his complaint for delivery of possession of the plot. Moreover, in the present case no evidence in the shape of measurement book, demarcation report etc. has been produced on record.

12. In view of our above discussion, we do not find any infirmity or illegality in the impugned order passed by the District Forum. There is no merit in the present appeal and the same is hereby dismissed.

13. The appellants/opposite parties had deposited a sum of ₹25,000/- at the time of filing of the appeal. This amount, along with interest which has accrued thereon, if any, shall be remitted by the registry to the District Forum, after the expiry of 45 days of the sending of certified copy of the order to the parties. The complainant may approach the District Forum for the release of the above amount and the District Forum may pass the appropriate order in this regard.

**(JUSTICE PARAMJEET SINGH DHALIWAL)
PRESIDENT**

**(MRS. KIRAN SIBAL)
MEMBER**

October 09, 2017.
Bansal