

Admn (L) - 150
11/2/09

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA,
PANCHKULA.**

Ven 2nd
10.2.09

First Appeal No. 2250 of 2006
Date of Institution: 22.09.2006
Date of Decision: 16.01.2009

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Admn (L) (away) 4/2/09
Haryana Urban Development Authority, Sector 6, Panchkula through its Chief Administrator.
2. Estate Officer Haryana Urban Development Authority, Sector 13-17, HUDA, Panipat.

CA 6/18
11/2

LR

Appellants

Versus

Smt. Jyoti Kansal wife of Shri Jugal Kishor Kansal, Resident of 42, GTB Colony, Panipat at present 26 Virat Nagar, Panipat.

---Respondent

BEFORE:

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

For the Parties:

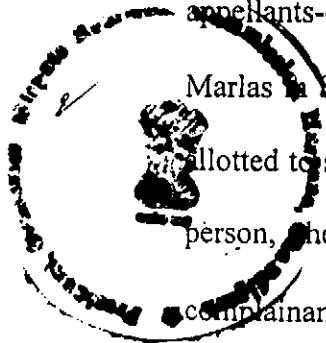
Mr. S.P. Singh, Advocate for appellants.
Mr. D.K. Singal, Advocate for respondent.

ORDER

Justice R.S. Madan, President:

This appeal is preferred against the order dated 17.8.2006 passed by the District Consumer Disputes Redressal Forum, Panipat whereby the complaint filed by the respondent (complainant) has been accepted and direction has been given to the appellants-opposite parties to allot the original plot bearing No.1708 measuring ten Marlas in Sector 18 HUDA Panipat to the complainant, if it was lying vacant and if not allotted to some other person, and in case if the said plot has been allotted to some other person, then the opposite parties shall make allotment of alternative plot to the complainant of same size in same sector on the same terms and conditions on which the original plot was allotted. The complainant shall be liable to pay the remaining costs of the plot with interest and penalty as per the rules of the HUDA. The compliance of this order was to be done within 30 days from the date of receipt of the copy of this order.

Concisely, the facts of the present case as can be gathered from the record are that the complainant was allotted plot No.1708 measuring 10 Marlas located in Sector-18, HUDA, Panipat as per letter bearing Memo No.9692 dated 30.7.1998 on a tentative price of Rs.3,01,352/-. The complainant had deposited 10% of the earnest money at the time of submitting application for allotment of the plot and thereafter deposited 15% of the



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cost of the plot after the allotment was made to her. It is the case of the complainant that she had deposited instalments of the plot in question from time to time. Subsequently, the opposite parties informed the complainant to take possession of the plot in question vide letter No.10633 dated 14.9.2001 issued to the complainant but as the development works in the Sector where the plot was allotted to the complainant, was incomplete, the complainant could not take possession of the plot. The opposite parties issued another letter to the complainant to deposit enhanced price in respect of the plot in question and as such the complainant felt harassment and for that reason she surrendered the plot to the opposite parties. The opposite parties deducted 10% of the total price of the plot and refunded the balance amount to her.

Terming the action of the opposite parties as illegal, the complainant filed complaint before the District Forum seeking direction to the opposite parties to restore her the plot in question and to adjust 10% already deducted amount towards the price of the plot. She further prayed for grant of compensation to the tune of Rs.100000/- for deficiency in service; Rs.20,000/- for mental agony and Rs.5500/- as litigation expenses.

Upon notice, the complaint was contested by the opposite parties. In their written statement filed before the District Forum, it was pleaded by the opposite parties that after the allotment of the plot in question was made to the complainant, the offer of the possession of the plot was made to her after completing the development works. They justified the additional amount demanded from the complainant on account of enhanced land compensation. They further pleaded that as the complainant had voluntarily surrendered the plot, the opposite parties had rightly deducted 10% of the total deposited amount and refunded the balance amount to the complainant as per the rules, regulations and policy of the opposite parties. Accordingly, it was prayed that the complaint merited dismissal.

Both the parties adduced evidence in support of their respective claims. On appraisal of the pleadings of the parties and evidence brought on record, the District forum did not accept the version of the opposite parties and while accepting the

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complaint issued the directions in its order dated 17.8.2006 noticed in the opening para of this order. Hence, the present appeal.

We have heard learned counsel representing the parties and also have perused the case file thoroughly.

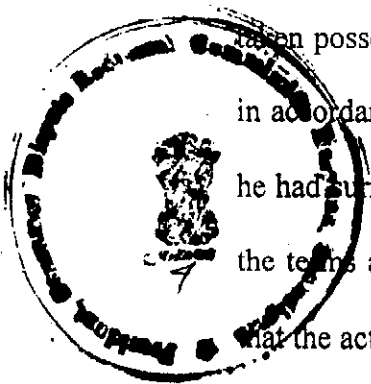
The order of the District Forum has been challenged by the appellants firstly on the ground that the District Forum has committed patent illegality in drawing a conclusion that the basic amenities were not provided in the area where the plot in question is located, rather, the opposite parties were fully justified in deducting 10% of the total price out of the deposited amount in terms of the HUDA policy coupled with the rules and regulations of the opposite parties. The submission made as such cannot be brushed aside. Surprisingly enough the District Forum has itself recorded in its order that basic amenities like roads, electricity water supply and sewerage had been provided in the area where the plot in question is located but school, shopping centers, telephone exchange and Post Office facilities had not been provided at the time of offer of possession of the plot was made to the complainant. It has been overlooked by the

District Forum that ~~that~~ the above said additional necessities cannot be considered as condition precedent so as to draw a conclusion of deficiency on the part of the opposite parties. In fact, all the essential basic amenities like roads, electricity, water and sewerage had been provided by the opposite parties at the time when offer of possession of the plot was made to the complainant. The main reason furnished from the side of the

complainant for surrender of the plot is the additional demand on account of land compensation made from the complainant. It cannot be denied that as per Clause-9 of the allotment letter it has been specifically provided that the mentioned price in the allotment letter is tentative to the extent any enhancement made on the basis of the award made by the competent authority under the Land Acquisition Act shall also be payable proportionately, determined by the Authority to be paid within 30 days of the demand made. This condition is a part of bilateral agreement and cannot be considered as oppressive condition so as to give a right to the complainant to surrender the plot on that account, rather, it has to be taken that the financial position of the complainant did not

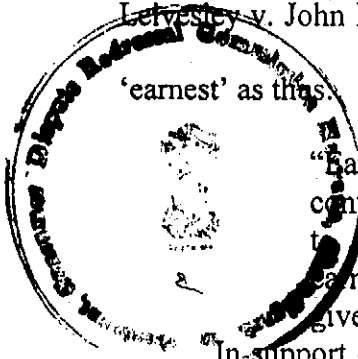
allow her to pay the additional amount and for that reason she opted to surrender the plot. Learned counsel for the appellants drawn attention of this Commission towards letter Annexure A-4 written by the complainant to the Estate Officer, HUDA, Panipat wherein it has been written by the complainant that neither she was in need of plot nor she had money to deposit money and therefore, she had no other option except to surrender the plot. Thus, the surrender made by the respondent (complainant) was voluntarily without any coercion from the side of the opposite parties.

The next contention raised on behalf of the appellants (opposite parties) is that they had rightly deducted 10% of the total price out of the amount deposited by the complainant as per policy of the HUDA. The stand of the opposite parties is supported by the cases referred to by the learned counsel representing the appellants-opposite parties during the course of arguments as in **Smt. Vijay Garg Vs. Haryana Urban Development Authority 2001(3) RCR (C) 293**, the facts were that complainant had taken possession of the site and had paid one instalment. The balance price was not paid in accordance with the allotment letter. Final instalment had come due on the date when he had surrendered the plot. 10% of the amount deposited was deducted keeping in view the terms and conditions of the allotment letter. Under these circumstances, it was held that the action of the opposite parties was neither ultravires of the Act and regulations nor arbitrary or capricious. It was further stated that the allottee having accepted the allotment, made some payment on instalment basis and even made a request for surrender, committed default on his part and the competent authority was justified while accepting the surrender in forfeiting the earnest money which had been deposited and not 10% of the amount deposited. Similar question has also arisen in **Civil Writ Petition No.13951/2003 Naresh Kumar Solanki Vs. Haryana Urban Development Authority**, wherein the facts were that the petitioner had expressed his inability to purchase the plot at the enhanced price and for that reason had chosen to surrender it. The respondents refunded the amount paid by the petitioner after making deduction of Rs.50069/- representing 10% of the total sale consideration. The action of the respondents was challenged on the ground that 10% of the deduction could be made only on the tentative



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price amounting to Rs.271092/- and not on account of enhanced price determined thereafter. The stand taken by the petitioner was rejected by coming to the conclusion that the demand had been made in accordance with the policy of the Haryana Urban Development Authority, which had come into being after allotment of the plot. Learned counsel for the appellants-opposite parties has contended that the Hon'ble Apex Court of India has taken similar view in case **H.U.D.A. and another vs. Kewal Krishan Goel and others, AIR 1996 SUPREME COURT 1981**, wherein the Hon'ble Court placed reliance on the observation of Wright, J. in the case of **Farr, Smith and Co. v. Messers, Ltd., LR (1928) 1 KBD 397**, quoting the observations of Hamilton, J., in **Summer and Levestey v. John Brown and C. (1909)25 Times LR 745**, with regard to the meaning of



'earnest' as this.

"Earnest".....meant something given for the purpose of binding a contract, something to be used to put pressure on the defaulter if he failed to carry out his part. If the contract went through, the thing given in earnest was returned to the given, If the contract went off through the giver's fault the thing given in earnest was forfeited."

In-support of his contention learned counsel for the appellants took shelter of the observations made by this Commission in **Estate Officer, Haryana Urban Development Authority & Anr. Versus Ex-Subedar Major Mahipal Singh, 2007(2) C.P.C. 730** wherein similar question of law and facts was decided.

The facts of the present case are at par with the cases cited supra and as such the ratio of the above mentioned cases would fully apply to the controversy raised in this appeal. The District Forum has not given due consideration to all these aspects while accepting the complaint and for these reasons the impugned order being illegal on the face of record is liable to be set aside.

For the reasons recorded above, the appeal is accepted, the impugned order is set aside and the complaint is dismissed.

Announced:
16.01.2009

- 1. Case No. 2250/06
- 2. Date of Disposal 16.01.09
- 3. Date of issue of first copy 23.1.09
- 4. Order delivered by Post/By Hand 5.2.09
- 5. Date of issue of duplicate copy

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Certified to be a true copy.
Superintendent,
State Consumer Disputes Redressal Commission
Haryana, Chandigarh

Justice R.S. Madan, President.
Dr. Rekha Sharma, Member
Diwan Singh Chauha, Member

Signature with date 23/1/09