

Complaint against statutory authority for deficiency in auctioned plot dismissed for lack of jurisdiction: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

VIVEK DODA & ANR.

...Appellant

ESTATE OFFICER

...Respondent

Case No: CONSUMER CASE NO. 3511 OF 2017

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MR MAYANK BIYENI, ADVOCATE

For Respondent: MR SANCHAR ANAND AND MS SUMBUL AUSAF
ADVOCATES

Facts:

Complainants purchased a residential plot through auction conducted by GMADA, a statutory authority in Punjab. As per auction brochure, possession was to be given within 90 days of allotment. Complainants were declared successful bidders and allotment letter was issued for plot no. 579A in Sector 65, Mohali admeasuring 196.25 sq yds for Rs

1.08 crores. Complainants paid 25% earnest amount of Rs 28.92 lakhs. Re-allotment was done later inducting the complainant no. 2 as a co-allottee. Complainants allege that even after 2 years, possession was not given. Hence termination of allotment was sought alongwith refund of amount paid with interest and compensation. Legal notice was sent to GMADA seeking refund of Rs 1.07 crores alongwith interest, compensation and costs. GMADA failed to reply. GMADA contested saying complaint is not maintainable against it. Further possession was ready and available, hence refund cannot be sought. Allotment was done on 'as is where is basis' through auction, hence complainants cannot be considered as consumers under the Consumer Protection Act.

Arguments:

Complainant's Arguments:

Legislative intent is to protect consumers against deficiency by statutory bodies also. Services definition is inclusive enough to cover statutory authorities. Reliance placed on Supreme Court judgment in Lucknow Development Authority v M.K. Gupta which held so. Reliance also placed on Ghaziabad Development Authority v Balbir Singh which held that consumers cannot be made to run pillar to post by arbitrary acts of authorities. Also on Fortune Infrastructure v Trevor D'Lima which held home buyers cannot wait indefinitely for possession.

GMADA's Arguments:

As per auction terms, once bid is accepted, bidder cannot withdraw or surrender the bid. The plot was auctioned on 'as is where is basis'. Allotment letter also recorded the same. Reliance placed on U.T. Chandigarh Admn v Amarjeet Singh which held where auction is without assurances of amenities, purchaser is not a consumer, owner is not a service provider, and consumer fora has no jurisdiction over such disputes.

Court's Reasoning and Decision:

Clause 30 of brochure and Clause III of allotment letter provide that construction should be done within 3 years of possession date. Hence GMADA's argument that complaint is premature as possession was not due, fails. Supreme Court judgment in U.T. Chandigarh Admn makes it clear that for auctioned plots on 'as is where is' basis with no

assurance of amenities, the purchaser is not a consumer and dispute does not fall under Consumer Protection Act. Undisputedly, present plot was also auctioned on 'as is where is' basis. Hence complainants have failed to make out a case of deficiency of service. Resultantly, this Commission lacks jurisdiction over the complaint. Complaint dismissed. Parties to bear their own costs.

Sections and Cases Referred:

Section 2(1)(d) of Consumer Protection Act, 1986 – Definition of 'consumer'.

Lucknow Development Authority v M.K. Gupta (1994) 1 SCC 243 – Statutory authorities also provide 'service' under Consumer Protection Act.

Ghaziabad Development Authority v Balbir Singh (2004) 5 SCC 65 – Consumers cannot be made to run pillar to post by authorities' arbitrary acts.

Fortune Infrastructure v Trevor D'Lima (2018) 5 SCC 442 – Homebuyers cannot wait indefinitely for possession.

Kolkata West International City Pvt. Ltd. v Devasis Rudra 2019 SCC Online SC 438 – Delayed possession entitles refund.

U.T. Chandigarh Administration v Amarjeet Singh (2009) 4 SCC 660 – Auction purchaser not a consumer when sale is on 'as is where is' basis.

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Court

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Full Text of Judgment:

1.The present complaint has been filed under section 12(a) of the Consumer Protection Act,1986 alleging deficiency in service and unfair trade practice in respect of a plot purchased bythe complainant through an auction by the in Greater Mohali Area Development Authority(GMADA) which is a State Development Authority of Punjab.

2.The opposite party in their brochure published on 2014 on their website for auction of 46 residential plots in Sector 65, Mohali on an 'as is where is basis', invited bids and the last date for submission

of the bid was 15.04.2014. As per clause 21 of the brochure, the possession of the plot was to be handed over within 90 days from the date of issuance of the allotment letter. The complainants submitted the bid for the same and the result of the auction was uploaded on the website of the opposite party on 06.05.2014. The complainants who were declared successful bidders paid the initial 25% of Rs.28,92,133/- of the sale price. Thereafter the opposite party issued an allotment letter dated 10.02.2015 bearing Memo No. 4749 in respect of plot bearing no. 579 -A in Sector 65, Mohali, ad-measuring 196.25 sq. yds. The total sale consideration of the allotted plot was Rs. 1,08,96,789 /- of which 75% of the balance sale price was to be paid by the complainant in lump sum with 5% rebate within 60 days of the issue of the allotment letter or in 6 half yearly equated instalments at the rate of 12% per annum.

3. Time was made an essential essence of the contract with the condition that 18% interest would be levied for period of delay upto 18 months, beyond which delay shall not be condoned under any circumstances and the said plot shall be resumed. The complainants had taken loan of Rs.70,00,000/- from HDFC Bank Ltd., at a half yearly rate of interest at 10.15%. Since there was a lapse of 90 days in payment of instalment, re-allotment letter was also issued by GMADA vide memo no. GMADA/2015/24140 dated 23.06.2015 where by Smt. Jyoti Doda, the present complainant no.2 was induced as a co-allottee. The complainants states that they lost faith in the false assurances given to them by the opposite party and decided to terminate the allotment on their own. Complainants sent a legal notice dated 05.09.2017 asking for refund of Rs.1,07,06,133/- along with interest @ 18% on account of mental agony and harassment to the complainants. The opposite party failed to reply to that legal notice. The conditions for willful breach of terms and conditions of the allotment letter by the opposite party are stated to be (i) failing to offer of possession of the allotted plot within the time period prescribed in the brochure / letter itself; (ii) on account of the failure to develop the allotted land of the complainants as promised; (iii) the deliberate and willful retention of the amount payable as refund to the complainant with interest in pursuance to the legal notice; (iv) the illegal use of the

amounts paid by the complainant in other areas which are not part of the allotted unit.

4. Therefore, the complainants filed the present complaint before this Commission with the following prayer:

i. the instant complaint may kindly be allowed;

ii. refund the total amount of Rs.

1,07,06,133/- paid by the complainant along with interest at the rate of 18% per annum compounded quarterly from the respective dates of deposit till date of payment;

iii. to pay an amount of Rs. 10,00,000/- as compensation for the mental agony and harassment caused to the complainant as also on account of the escalation in real estate prices;

iv. to pay an amount of Rs. 1,00,000/- as litigation cost, in the interest of justice, equity and good conscience;

v. to pay an interest of Rs. 10,02,909/- on account of interest accrued on the home loan till date;

vi. any other order which this Hon'ble National Consumer Disputes Redressal Commission deems fit under the facts and circumstances of the case may also be granted in favour of the complainants.

5. The opposite party resisted the complaint by way of reply and affidavit and contended that GMADA is a body corporate & can sue & be sued on its own name through its principal officers; therefore, the impleadment of the opposite party is improper and incorrect and legally unsustainable and therefore, this complaint deserves to be dismissed for this reason alone. Opposite party further contended that complainants are not 'consumers' as they had purchased the plot for speculative purposes. The letter of allotment dated 10.02.2015 states under the head "Disputes" that "in case of any dispute or differences arising out of the terms & conditions of auction or allotment letter, the same shall be referred to Chief Administrator, GMADA. The decision of the Chief Administrator in this regard will be final and binding on all the parties". Thus, in view of this clause the matter deserves to be referred to Chief Administrator, GMADA in terms of this clause. Further, it is contended that the complainant had given the highest bid after seeing the situation & location of the plot @

Rs.10,896,789/- against the reserved price of Rs. 10,597,500/- for the plot in question. Development work at the site was in progress at the time of allotment and after being satisfied with the same, complainants deposited Rs.27,24,198/- towards 25% amount of the plot and accordingly, allotment letter was issued. The development work of the pocket, where the plot in question was situated, was completed and was feasible for delivery of possession to the complainant at the time of filing this reply. Complainants can take possession of plot on any working day within office hours.

6. Opposite party also states that according to condition no. 30 of the brochure for this scheme as well as condition no. 3 under the head "usage and period for construction" of the allotment letter, the 3 years period for raising the construction would start from date of possession. Complainant was stopped from seeking interest at that stage when the condition of the brochure and the allotment letter, which were accepted by him, do not permit him to seek refund of deposited amount/ interest on the deposited amount. Further, it was mentioned that it was now here mentioned that the time is the essence of the contract. It was denied by the opposite party that following lapse of 90 days period, a re-allotment letter was issued by GMADA where Smt. Jyoti Devi was inducted as a co-allottee. However, it was admitted that on 08.06.2015 vide application no.5247 the complainant requested for transfer of ownership of the said plot to the extent of 50% share in the name of Smt. Jyoti Devi and the same was done and re-allotment letter was issued on 23.06.2015.

7. The complainant in his written arguments stated that the legislative intent is clear to protect the consumer against services rendered even by the statutory bodies and the legislature has used an inclusive definition of the word "services" to even such facilities as are available to a consumer in connection with banking, finance etc. and each of these activities are discharged by both statutory and private bodies and in absence of any indication, express or implied, there is no reason to hold that the authorities created by a statute are beyond the purview of the Act. To support this argument reliance has been placed upon judgment of Hon'ble Supreme Court in the case of Lucknow

Development Authority Vs. M. K Gupta (1994) 1 SCC 243. Reliance has been placed upon Ghaziabad Development Authority Vs Balbir Singh (2004) 5 SCC 65 wherein it was held that the consumer must not be made to run from pillar to post and where there has been capricious or arbitrary or negligent exercise by an officer of the authority; and (ii) in Fortune Infrastructure & Anr. Vs Trevor D'Lima & Ors. (2018) 5 SCC 442 & Kolkata West International City Pvt. Ltd. Vs Devasis Rudra 2019 SCC Online SC 438 wherein it was held by the Hon'ble Supreme Court that a home buyer cannot be made to wait indefinitely for possession and in such cases where there is inordinate delay, the consumer is entitled for the refund of the amount paid by the consumer to the opposite party.

8. On the other hand, The opposite party has relied upon the judgment of U.T. Chandigarh Administration & anr. Vs. Amarjeet Singh & Ors. (2009) 4 SCC 660 wherein it was held that:

"19.The auction is on 'as-is-where-is basis'. With such knowledge, he participates in the auction and offers a particular price. When the sites auctioned are existing sites, without any assurance/ representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the tests laid down in LDA [(1994) 1 SCC 243] or Balbir Singh [(2004) 5 SCC 65].

21. With reference to a public auction of existing sites (as contrasted from sites to be 'formed'), the purchaser/ lessee is not a consumer, the owner is not a 'trader' or 'service provider' and the grievance does not relate to any matter in regard to which a complaint can be filed. Therefore, any grievance by the purchaser/ lessee will not give rise to a complaint or consumer dispute and the forum under the Act will not have jurisdiction to entertain or decide any complaint by the auction-purchaser/ lessee against the owner holding the auction of sites."

9. Parties led their evidence and filed their written submissions. I

have heard the learned counsel for the parties and perused the records carefully.

10. The argument of the complainant is that complainant made a bid through application on 06.05.2014, and the complainant was declared a successful bidder who made the highest bid in the auction. Therefore, plot no. 579 -A in Sector 65, Mohali with area measuring 196.25 sq.yds. was allotted on 10.02.2015 in the name of the complainant for total consideration of Rs.1,08,96,789/- and the complainant paid an amount of Rs.28,92,133/- as per the terms and conditions of the brochure and 75% balance of the sale price was to be paid by the complainant in lump sum with 5% rebate within 60 days of issue of the allotment or in 6 half yearly equated instalments with interest @ 12% per annum. Thereafter, on the request of the complainant no.1 the said plot was transferred and re-allotted in favour of complainant no.1 and complainant no.2 holding 50% each vide re-allotment dated 23.06.2015. Even after more than two years, in breach of clause 21 of the brochure, opposite party had not handed over possession of the plot to the complainants.

11. The opposite party argued that since GAMADA was a statutory authority therefore, they do not fall under the purview of the service provider under the CP Act, 1986. The opposite party has argued that they have filed its counter affidavit stating that the complainant can take peaceful physical possession from the opposite party at any point of time as the plot in question was completed. Opposite party has further stated that complainant was not entitled to refund in any manner as per clause 12 of the terms & conditions of the bid document which says that 'after the bidding process is over no person whose bid was accepted, shall be permitted to withdraw or surrender his/her bid on any ground, and in case he/she does so, the earnest money deposited by him/ her shall stand forfeited in full'. Opposite party has further argued that the residential plots in question were offered for auction on 'as is where is basis' which is specifically mentioned in the terms & conditions of the auction. Moreover, the allotment letter dated 10.02.2015 specifically records that the allotment was by auction and in clause 6 sub-clause 2 of the allotment letter records that "the

plot was offered on 'as is where is basis' and the authority will not be responsible for levelling the site or removing the structure". However, the opposite party had not offered the possession until 2018 and same was offered much after filing of the complaint. Further the opposite party has stated that the complainant was auction purchaser of the existing site therefore the complainant cannot file a consumer complaint under the provisions of CP Act.

12. The contentions of the opposite party have been considered. The legislative intent is clear in seeking to protect the consumer against "services" rendered even by the statutory bodies and the legislature has used an inclusive definition of the word "services" to even such facilities as are available to a consumer in connection with banking, finance etc., and each of these activities are available were discharged by both statutory and private bodies. Authorities created by statute are not exempted. Clause 30 of the brochure as well as condition no. III of the allotment letter states that the "allottee will have to construct the building in the said plot within 3 years of the date of possession". This argument cannot, therefore, be considered.

13. As regards the contention of the opposite party that the complainants were not a 'consumer' as the plot was purchased through an auction and therefore, this Commission lacked jurisdiction to entertain the complaint, it is well settled law as per the judgment of Hon'ble Supreme Court in U.T. Chandigarh Administration & anr. Vs. Amarjeet Singh & Ors. [(2009) 4 SCC 660] which held that: "14. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated

interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided. With reference to a public auction of existing sites (as contrasted from sites to be 'formed'), the purchaser/lessee is not a consumer, the owner is not a 'trader' or 'service provider' and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the forum under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites."

14. There is no dispute that the plot in question was notified for auction on an 'as is where is' basis through auction. Therefore, the plot in question cannot be stated to have been allotted but, was a purchaser. In view of the foregoing the maintainability of the complaint is not supported by law. The complainants have failed to make out a case to be a 'consumer' under section 2 (1) (d) of the Act. As a result, this Commission does not have jurisdiction to entertain the present consumer complaint. Therefore, the same is dismissed. Parties to bear their own cost. All pending IA's if any, shall stand disposed of by this order.