

Refund of plot allotment money due to deficiency in service by the development authority: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

PUNJAB URBAN PLANNING & DEVELOPMENT AUTHORITY

...Appellant

GURINDER SINGH

...Respondent

Case No: FIRST APPEAL NO. 779 OF 2020

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER

DR. SADHNA SHANKER – MEMBER

For Appellant: MS. ANUSHA NAGARAJAN, ADVOCATE

For Respondent: None

Facts:

The complainant applied and got allotted a 331 sq. yard plot in Gateway City developed by the Punjab Urban Planning and Development Authority (development authority). He paid Rs. 18,76,770 towards the allotment. Later it was found that some part of the allotted land falls on the river bed of "Patiala Ki Rao". So the development authority offered an alternative 300 sq. yard plot to the complainant. The complainant refused this alternative plot stating that it was not

suitable to him and requested refund of deposit as per the allotment letter terms. The development authority insisted the complainant to accept the alternative plot and make the balance payment. It also stated that refund would be made only as per the allotment letter terms like forfeiture of 10% earnest amount if refund request is made after 30 days. Aggrieved, the complainant approached the State Commission and sought refund of Rs. 18,76,770 along with interest, compensation for mental agony and litigation expenses.

Arguments by the Complainant:

The plot initially allotted was not feasible for construction as some part was on the river bed. The alternative plot offered was also not suitable as it was not a single lane plot. Allotting non-existent or unsuitable plot amounts to deficiency in service by the development authority. The actions of the development authority amounts to fraudulent activities.

Arguments by the Development Authority:

The complainant cannot be considered a "consumer" under the Consumer Act as the plot was purchased for speculative purposes. The complainant failed to make timely installments and did not seek refund till July 2019. Lack of necessary documents made it difficult to process the refund request. It had promptly offered an alternative plot as the initially allotted plot was found unsuitable later. It was willing to refund the amount if the complainant followed the terms and procedure laid in the allotment letter regarding refund request and forfeiture of earnest amount.

Opinion by the State Commission:

Allowed the complaint seeking refund and compensation for financial loss caused by depriving the use of deposited amount. Directed the development authority to refund Rs. 18,76,770 with interest @12% p.a. from respective deposit dates till realization. Also directed to pay Rs. 22,000 as compensation for mental agony and harassment.

Sections:

Section 51 – Appeal before National Consumer Disputes Redressal Commission

Section 2(7) – Definition of Consumer

Laws Referred:

Consumer Protection Act, 2019

Opinion by National Commission:

The development authority failed in due diligence by allotting plots without properly verifying feasibility and encumbrances. Initial unsuitable plot allotment and later offer of unsuitable alternative plot amounts to deficiency in service. The State Commission rightly held the development authority accountable for such deficiency. The appeal by the development authority lacks merit. Therefore, the National Commission dismissed the appeal by the development authority and upheld the State Commission order.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1.The present Appeal has been filed under Section 51 of the Consumer Protection Act, 2019(for short “the Act 2019”) by Punjab Urban Planning and Development Authority (herein after referred to as the “development authority”) assailing the order dated 17.06.2020 passed by theState Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the “StateCommission”) in Complaint No. 36 of 2020 whereby the complaint filed by the complainant was allowed and the development authority was directed to refund the entire amount ofRs.18,76,770/- to the complainant along with interest at the rate of Rs.12% per annum ascompensation for financial loss and Rs. 22,000/- as compensation for mental agony.

2.There is a delay of 104 days in filing the present appeal. In the interest of justice and considering the reasons mentioned in the application forcondonation of delay, the delay in filing the appeal is

condoned.

3. Brief facts of the case as narrated in the complaint by the complainant are that the complainant being influenced by the advertisement issued by the development authority applied for allotment of plot measuring 331 sq. yds. in Gateway City, Sector 118-119, S.A.S. Nagar, vide application no. 12043. The complainant was declared successful in the draw of lots and was allotted plot No. 627 measuring 331.66 sq. yds. The complainant paid a total amount of Rs. 18,76,770/- with the development authority. The complainant stated that some part of the said land falls in the place of a common water flow/river bed called "Patiala Ki Rao". Keeping this fact in mind, the complainant, along with some other allottees, halted further payments and some of them initiated legal proceedings against the development authority on this issue. The complainant informed this issue to the development authority. The development authority vide its letter dated 21.11.2018 offered another plot No. 645 measuring 300 sq. yds. in place of the earlier plot to the complainant. It is alleged by the complainant that the offered plot i.e. plot No. 645 was not a single lane plot and not suitable to him and is located on disputed land. In response, the complainant sent a letter dated 18.12.2018, to the development authority pointing out the violation of Clause 4(i) of the allotment letter and requesting for a new layout plan along with the copy of rule and procedures for claiming a refund. However, the development authority in its reply dated 18.07.2019 insisted the complainant deposit the balance consideration, despite the ongoing concerns raised by the complainant. The complainant further asserted that the alternative plot offered to him was not suitable. It is further contended that the actions of the development authority amounted to fraudulent activities by allocating a plot that was not in existence or was not suitable for the complainant's needs or expectations.

4. Aggrieved by the actions of the development authority, the complainant filed a complaint before the State Commission, Punjab with the following prayer:-

i. To refund the entire amount deposited by the complainant, along with interest at the rate of 18% per annum compounded half yearly i.e.

interest on Rs.6,95,000/- (application money) starting from 15.01.2015 and interest on Rs. 11,81,670/- (amount advised in the Letter of Intent) starting from 26.06.2015 till actual realization. The interest amount up to 31.12.2019 comes to be Rs.23,32,802/-. Thus, till 31.12.2019, total amount comes to be Rs.42,09,572/- (Rs.18,76,770 plus Rs.23,32,802/-) as per calculation sheet Ex.C-19;

ii. To pay compensation of Rs.5,00,000/- on account of mental agony and harassments suffered by the complainant; and

iii. To pay Rs.75,000/- towards litigation expenses;

(As per State Commission's order)

5. The development authority contested the complaint by filing a written statement and stated that the complainant does not fall within the definition of 'consumer' as defined under Section 2(7) of the Act 2019 since the plot was allegedly purchased for speculative purposes. It is further alleged that the complainant had not deposited the timely installments and had not requested for refund of the deposited amount till 25.07.2019. Additionally, it is alleged that not providing the original letter of intent, allotment letter, or bank finance clearance, hindered the process for refund as per the terms of the allotment letter. The development authority had acknowledged that the complainant was allotted plot No. 627, measuring 331.66 sq. yds. and had deposited 25% of the amount along with 2% Cancer cess. The development authority admitted that the complainant was offered a plot size of 331 sq. yds. via a letter dated 21.11.2018. It is also admitted that 17 plots, including the complainant's plot, were affected, leading to the allocation of alternative plots. Consequently, the complainant was allotted Plot No. 645, measuring 300 sq. yds. in place of plot No. 627.

6. The development authority controverted the other averments of the complaints and prayed for dismissal of the complaint with cost.

7. The State Commission, vide its Order dated 17.06.2020, had allowed the complaint and directed the development authority as under:

"i. to refund the entire amount of Rs.18,76,770/- deposited by the complainant, along with compensation for causing financial loss and depriving the complainant of the use of the said amount during the

period it remained with the opposite parties at the rate of 12% per annum from the respective dates of deposit till realization;

ii. to pay Rs.22,000/- as compensation for the mental agony and harassment suffered by the complainant, including litigation expenses.”

8. Aggrieved by this Order of the State Commission, the development authority filed the instant appeal before this Commission with the following prayer:

- a. Allow the Present appeal;
- b. Set-aside the Order dated 17.06.2020 passed in Consumer Complaint No. 36 of 2020 by the Ld. State Commission, Punjab, Chandigarh; and;
- c. Pass any other further order(s) which this Hon'ble Commission deem fit, just and proper under the facts and circumstances of the case.

9. The development authority's main contention against the impugned order of the State Commission is that it had overlooked the fact that the complainant's claims are based on an illusory or imaginary narrative, especially regarding allegations of encroachments and disputed ownership of land. The development authority emphasized that there was no deficiency or fault on its part. It has been highlighted that all successful allottees were provided with allotment letters and letters of intent. Additionally, upon discovering the non-feasibility of certain plots, alternative plots were promptly allotted to the allottees. Moreover, the development authority mentioned that it had agreed to refund the amount to the complainant provided the necessary procedure as per Clause 9 & 10 of the Letter of Intent is followed which clearly states:

“9. The allotment of plot is being offered on “as is where is” basis.
10. In case of refusal to accept this often such refusal should be conveyed in writing through a registered post within 30 days from the date of issue of Letter of Intent (excluding date of issue) In such an event 10% of earnest money deposited shall be forfeited. In the event such event such status is received after the period of 30 days from the date issue of this Letter of Intent, the entire amount of earnest money shall be forfeited.”

10. The complainant reiterated the facts pleaded before the State Commission.

11. We have heard the learned counsel for both the parties and perused the material available on record.

12. From a perusal of the documents on record, it is apparent that the development authority failed in conducting essential due diligence before launching the scheme and inviting applications from the public for allotment. The development authority being responsible for such procedures, should have diligently investigated the allotted land to ensure its freedom from encumbrances or encroachments. The initial allotment of a plot situated on a river bed rendered it unsuitable for constructing a residence, which was the primary intent of the complainant's application in the scheme. This admission by the development authority underscores the impracticality of the early allotment. The act of launching plot allotment schemes without verifying the feasibility of each plot highlights a lackadaisical approach adopted by the development authority. Consequently, the State Commission's decision to hold the development authority accountable for deficiency of service appears just and proper.

13. In view of the discussion above, we are of the considered view that the order of the State Commission does not suffer from any illegality or irregularity.

14. Therefore, the appeal, being devoid of merit, is dismissed.