

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

APPEAL NO.3461 OF 2003

(Against the judgment/order dated 18.6.2003 in Complaint
Case No.537/02 of the District Consumer Forum, Gautambudh Nagar)

Greater Noida Industrial Development Authority ...Appellant
Versus
Bhagirath Sewa SansthanRespondent

BEFORE:-

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT.
HON'BLE MRS. RACHNA, MEMBER.

For the Appellant : Mr. Rajesh Chaddha, Advocate.

For the Respondent : Mr. A.K. Singh, Advocate.

Dated : 17.1.2011

JUDGMENT

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard learned counsel for both the parties at length and perused the entire record before us.

The core issue which requires our determination and which is the main bone of contention between the parties is as to whether the interest to be levied upon the complainant/allottee of the plot No.19 measuring 8190 Sq. meters Greater Noida has to be reckoned with from the date of initial allotment-cum-intimation letter dated 16.3.1999 as pleaded by the appellant authority or it is to be calculated w.e.f. 16.9.1999 i.e. from the date of the revised allotment-cum-intimation letter as pleaded by the respondent/complainant ?

The facts which are not disputed would indicate that plot No.19 having an area of 8190 Sq. meters was allotted to Bhagirath Sewa Sansthan for establishment of Integrated Higher Secondary School at Greater Noida at the rate of Rs.625.00 per Sq. meter. Out of this land, 4047 Sq. meters land had to be given free of cost for play-ground and the total price of the land which was the subject matter of realisation, as the lease-rent and the premium amount was Rs.25,89,375.00. What is more important to note as admitted to both the parties, they are ready and willing to execute their part of performance in accordance with the

Begon

(2)

allotment dated 16.9.1999. However, a difference of opinion arises out of this allotment letter of September 16, 1999. A careful reading of this letter would show that the Greater Noida insisted for treating the crucial date of allotment-cum-intimation letter as 16.3.1999 whereby a larger chunk of land measuring 8190 Sq. meters of land was allotted to the complainant with 4047 Sq. meters of the land to be allotted free of cost i.e. for play-ground.

Whereas the contention of the learned counsel for the respondent/complainant is that the Greater Noida authority was not in a position to provide 6000 Sq. meters land free of cost at the site which was originally allotted to the complainant, the Development Authority having a converse version, has stated that the area of the allotted land was reduced on the request of the complainant. There is no letter on record which could have been sent on behalf of the Greater Noida thereby intimating to the complainant that the Authority for some reasons was not in a position to provide 12000 Sq. meters of land at the original site with the provision for one acre land to be provided free of cost; nor any document such as minutes of the meeting held between the two have been brought on record to depict some light on the issue. However, learned counsel for the Authority has relied upon a letter of November 27, 2000 whereby Sri Kusumkar Shukla, the Secretary of Bhagirath Sewa Sansthan has expressed his inability to take the first site for the purpose of running a school. A careful reading of this letter would reveal that the plot which had been allotted to the complainant vide allotment letter dated 16.3.1999 could not cater the need of the complainant. It has also been mentioned in this letter that the plot initially allotted to him was not available at the site for being provided to him. Then there were two requests of the complainant which were pressed into service- one pertains to change of date of allotment dated 16.3.1999 to 16.9.1999 and the other relates to reduction of rate of interest from 18% to 15%. Whether this letter was replied or not by means of a written reply letter is not certain, as can be observed at this juncture. Insofar as the rate of interest is concerned perhaps there is no surviving issue at this time and, therefore, we need not to delve upon it.

Baagjan

The other request which was made by the complainant in the said letter and which eventually obliged him to file a complaint before the District Consumer Forum below related to the date of allotment.

The Greater Noida Authority, however, insisted throughout to stick to its original stand of treating March 16, 1999 to be the initial date of allotment and it was on the basis of this contention as recited in the letter of September 16, 1999 that interest has been calculated as Rs.7,22,400.00 at the time of letter dated 5.12.2001 having been issued. Further calculations of interest have been made accordingly from the same date.

Having given our anxious thought to the burning issue of exact date for the purpose of calculations, we find ourselves unable to conceive the idea for the complainant to abide by the condition of making payment of Rs.5,17,875.00 within 90 days from the date of issuance of the letter dated 16.3.1999. The first letter of allotment dated 16.3.1999 is annexure 'I' on record and as is evident from its perusal it provides that Rs.4,97,065.00 had to be deposited within 30 days from the date of allotment and Rs.9,94,125.00 to be deposited within 90 days from the issuance of this letter. It is not in dispute that these sums were not deposited by the complainant perhaps because the land allotted to him earlier was not either suitable or available for being handed-over to him. Be that as it may, the terms and conditions of the first letter were not carried out as the site of the land was changed may be for any reason. Neither of the two parties had suffered on account of the resultant factor. It was in this background that the complainant sent his request vide letter dated 27.11.2000 that the rate of interest might be calculated w.e.f. the date of second allotment and not from the first allotment. In this context, it would also be relevant to mention that before this letter of request was pressed into service on behalf of the complainant he had already deposited a sum of Rs.4,00,000.00 on 16.10.1999 and another sum of Rs.8,65,000.00 on 25.11.1999. It would be relevant to mention here that subsequently he deposited the balance amount of Rs.17,17,000.00 on 7.2.2001 and thus, by that time a total

Receipt

(4)

sum of Rs.25,89,375.00 i.e. the total price of the land as recited in the allotment letter dated 16.9.1999 had been remitted by the complainant. We do not find any plausible and cogent reason for the complainant to be fastened with liability of making interest w.e.f 16.3.1999 particularly when the land which had been allotted to him could not be provided to him at the site.

The issue regarding allotment of land for play-ground was also playing a dominant role. Although learned counsel for the appellant Authority has denied the complainant's allegation that one acre free land was not available at the original site yet not attaching much significance to this, we are inclined to hold that the second allotment was most crucial from all points of view as the contract between the parties in respect of the land of plot No.19 has been finalised on 16.9.1999 and never before. Therefore, the rights and liabilities of the parties have to be reckoned w.e.f. second date of allotment-cum-intimation letter dated 16.9.1999 and not from the first date of allotment letter dated 16.3.1999. Accordingly, we hold that the interest which the complainant would be liable to pay as per terms and conditions of the agreement incorporated in the letter dated 16.9.1999 will be calculated from the said date of letter- to be specific 16.9.1999 and not from 16.3.1999.

To summarise, the contention of the learned counsel for the appellant is not sustainable for the following reasons:-

1. The agreement dated 16.3.1999 had not been given effect to by either of the two parties.
2. The site of the land had changed.
3. The measurements of the allotted lands by means of the two agreement letters had changed.
4. The measurements of land, meant for the play-ground had also changed.
5. The deposit of Rs.5,17,875.00 as recited in the subsequent allotment letter dated 16.9.1999 could not be made within 90 days from the first date of allotment i.e. 16.3.1999 as it was a task next to impossible on account of 90 days having already expired on

Receipt

(5)

June 15,1999. We wonder as to how an impossible task was given to the complainant by the appellant Authority.

Such a demand depicted high handedness of the Authority besides it being an unfair trade practice.

The issue we have framed at the inception is answered, accordingly.

Learned counsel for the Greater Noida Authority has also raised issue of jurisdiction and limitation. Insofar as the point relating to jurisdiction is concerned, the complainant sought by filing his complaint implementation of the execution of the lease-deed and since no payment was involved before the filing of his complaint he had deposited the entire sum of Rs.25,89,379.00 besides registration amount of Rs.10,000.00, the District Consumer Forum below can be said to have rightly entertained the complaint and determined it.

As regards the limitation, it may be mentioned that the complaint was filed in 2002 taking the last demand letter dated 5.12.2001 as the date of the cause of action having arisen. We, therefore, do not find any merit in the appellant's contention regarding limitation.

Having regard to the pros and cons we have discussed above, we arrive at a conclusion that the appellant committed deficiency in service while issuing a demand claiming interest from the date of first allotment letter dated 16.3.1999. However, the complainant shall be liable to pay interest, if any, for the delay that occurred in remitting the balance amount of price in 2001.

In the result, the instant appeal being devoid of merit stands dismissed with costs which we quantify at Rs.5,000.00


(JUSTICE BHANWAR SINGH)
PRESIDENT


(RACHNA)
MEMBER

Jafri