

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO. 619/2007

(against the judgment and order dated 20.02.2007 in Complaint case no. 129/2004 passed by the District Consumer Forum, Gautam Budh Nagar).

Sqn. Ldr. (Retd.) Krishna Kumar Singh
G-574, Sector, Alpha-II, Greater Noida,
District Gautam Budh Nagar

Appellant

Versus

Greater Noida Industrial Development Authority,
Greater Noida, Gautam Budh Nagar

Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER
HON'BLE RAM PAL SINGH, MEMBER

For the Appellant

: Sri K.K. Singh himself.

For the Respondent

: Sri Rajesh Chadha, Advocate

DATED: 04.03.2011

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

We have heard the appellant Sri K.K. Singh in person and Sri Rajesh Chadha, learned counsel for the respondent.

This appeal is directed against the judgment and order dated 20.02.2007 of the District Consumer Forum, Gautam Budh Nagar, whereby the appellant's complaint for setting aside the letter dated 07.02.2004 was dismissed on the ground that the appellant himself was to blame for the delay in raising construction after getting the lease deed executed. The undisputed facts narrated before us are that the Greater Noida Industrial Development Authority allotted an institutional plot to the appellant/complainant for establishing a nursery school vide letter dated 15.11.2000. The schedule of payment was prescribed by means of the said letter and the details of the plot allotted to him were also

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described. The complainant was expected to have started construction by June 2001 and completed it within eighteen months from the date of allotment. The complainant did not move according to construction plan to be completed within eighteen months. On June 21, 2003 a letter was written to the complainant whereby he was informed that his lease plan has been finalized and thereby he was also directed to get the lease deed executed. There was insignificant variation in the measurement in the plot. Whereas earlier he was allotted 1002.22 square meters, by means of letter dated 21.06.2003 the area of the plot was mentioned to be as 1045.64 square meters. The lease deed then was got executed. Then on 17.09.2003 the complainant prayed for extension of time prescribed for construction and completion thereof. He had written another letter dated 16.12.2003 reiterating his request for extension of time which was allowed by the Greater Noida Industrial Development Authority vide its letter dated 07.02.2004. The appellant was aggrieved of this letter in so far as it asked him to pay Rs.70,581/- as penalty for the delay in raising construction of the school and this has given him a cause of action to prefer his complaint before the District Consumer Forum. The core issue which arises for our determination is as to whether there was delay on the part of the complainant in starting and completing the construction of the school building and if so, whether he was liable to pay the penalty asked for?

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While negating the argument of the Greater Noida Industrial Development Authority for its demand for payment of the penalty, the appellant has placed reliance upon the letter dated 21.06.2003 issued to him by the Greater Noida Industrial Development Authority. Its perusal would reveal that the appellant was asked to get the lease deed executed as the lease plan of his plot had been finalized with slight increase in the area of the plot and the proportionate price. Whereas the construction period prescribed in the letter of allotment dated 15.11.2000 could not be complied with as the lease plan had not been finalized, the Greater Noida Industrial Development Authority has insisted that the construction plan conveyed to the complainant vide its letter dated 15.11.2000 should have been strictly adhered to. In this back ground it would be relevant to

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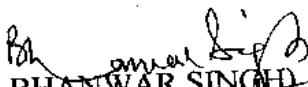
ascertain as to whether the complainant could have acted upon the construction plan on the basis of the allotment letter dated 15.11.2000. In this context a reference may be made to the terms and conditions of the brochure which virtually form part of the allotment letter. Learned counsel for the Greater Noida Industrial Development Authority has referred to the relevant condition regarding execution of lease deed and possession. It postulates that the allottee can execute the lease deed and take possession of the plot at any time after he had deposited 30% of the total premium of the plot. It is admitted to the complainant that he had taken possession of the plot on 14.07.2003 i.e. after the letter dated June, 21, 2003 was issued to him and the lease deed had also been executed in June 2003. If we read in between the lines of conditions prescribed for execution of the lease deed the appellant had a right to get the lease deed executed at any time after he had deposited 30% of the premium of the plot. In that case he was not required to wait upto the finalization of the plan as recited in the letter dated 21.06.2003 of the Greater Noida Industrial Development Authority. As a matter of fact this letter of the Authority was not dependent upon any other terms and conditions as the two important aspects of the matter i.e. payment schedule and also construction schedule were precisely conveyed to the complainant vide the first allotment letter of Nov. 2000. The urgency required in the matter of institutional plot can very well be appreciated and since there are some liberal terms and conditions of allotment in the case of such allotment, the construction schedule has to be followed as prescribed. The complainant himself was aware of this position and it was in that back ground that while writing a letter to the Greater Noida Industrial Development Authority on Sept. 17, 2003 he sought extension of the construction period by making a request that eighteen months' time might be calculated from the date of disposal of the said letter i.e. the letter dated 17.09.2003. In para 2 of this letter he has given some reasons for the delay on his part. As those reasons are not supported by any relevant document we do not find any substance therein. Not only this, he also wrote another letter on Dec. 16, 2003 and prayed for extension of

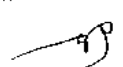
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time, although in this letter he has accused the authorities for the delay on their part in keeping the construction plan pending. We thus, find that the construction of the school building had to go according to the construction schedule as laid in the original allotment letter of Nov. 15, 2000 and in order to achieve that construction plan the complainant was under an obligation to do every thing he would have been required to carry out. In other words it may be mentioned that he should have taken possession of the plot after depositing 30% premium of the plot and then started construction in time. He was not required to wait for finalization of the lease plan as the lease could very well be executed of the plot allotted to him and described in the original letter. As a matter of fact the letter of June 21, 2003 was a reminder to him to get the lease deed executed at the earliest. In our considered opinion this letter should not have given to him a fresh lease or fresh extension of time on the basis of the augment that nothing could have been done prior to it. The complainant was therefore, to blame himself for the delay on his part in taking of the construction schedule. As a matter of fact construction of the school building was the main goal and the formalities required were subsidiaries to be taken recourse to with a view to achieve the said goal. We therefore, do not find any merit in this appeal and hold that the complainant may pay the penalty for the delay in starting construction of the school building no sooner than later.

In the result this appeal stands dismissed. However, in the circumstances we make no order as to costs.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


(RAM PAL SINGH)
MEMBER