

CASE NO.:
Appeal (civil) 6572 of 2005

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
B.K. Sood

DATE OF JUDGMENT: 26/10/2005

BENCH:
Ruma Pal & Dr. AR Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 9076 of 2004)

RUMA PAL, J

Leave granted.

In this appeal an order passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the "National Commission") is challenged to the extent that the National Commission had awarded two lacs compensation which was to be paid by the appellant to the respondent. The appellant held an auction of booth sites plots/building at No.90, Sector 9 at Panchkula on free hold basis in 1986. The respondent bid for one booth/ site plot which was accepted by the appellant. An allotment letter was issued on 12th January, 1987 to the respondent in which it was mentioned that the allotted area of the booth/ site was 45.37 sq. meters including the side verandah at a price of Rs.2,53,000/- which could be paid in instalments. After adjusting the earnest money deposited, the respondent was required to pay the balance of 25% of the price of the plot within 30 days upon which the possession of the booth site would be given. The balance amount of the purchase price of Rs.1,89,750.00 was payable in ten half yearly instalments, the first of which was payable after the expiry of six months. In terms of the allotment letter the last instalment was payable on 12th December, 1991. The allotment letter also mentioned that each instalment would be recoverable together with interest on the balance price at 10% interest on the remaining amount which would start to accrue from the date of offer of possession of the said booth.

The respondent admittedly did not pay all the instalments. The total amount paid was Rs.1,45,790/-, leaving outstanding a sum of Rs.2,03,580/- inclusive of interest calculated upto 12th November, 1991. The appellant issued several notices of demand to the respondent. According to the appellant, pursuant to one of the notices, the respondent had appeared on 18th December, 1991 and promised to pay the outstanding dues by 31st December, 1992. However, no payment was made. Ultimately the appellant issued a notice on 31st May, 1996 to the respondent demanding payment.

On 6th April, 1997 the respondent filed a complaint before the State Consumer Redressal Commission (hereinafter referred to as the "State Commission") in which the respondent claimed an order directing the setting aside of the notice of demand dated 31st May, 1996. They also asked for removal of the "deficiencies" in the booth and for compensation on account of damage to the extent of Rs.10 lacs for the appellant's alleged gross failure in discharging their legal duties which had

allegedly "caused extensive losses in terms of business, health, mental peace, family up-bringing, education of children etc." of the respondent and for an amount on account of "extreme deficiency of service" on the appellant's part.

The deficiencies alleged in the complaint were as follows:

a) the booth of which possession was given by the appellant measured only 2.75 x 8.25 sq. mts. as against the advertised area of 5.5 x 8.25 sq. mts.

b) unauthorized bhatties had been kept in the verandah of the neighbouring shop which had seriously affected the health and business of the respondent.

c) The appellant had unauthorisedly sanctioned a STD/PCO in front of the respondent's booth due to which the respondent had lost the advantage of having purchased a corner booth. The appellant filed an affidavit before the State Commission countering the submissions in the respondent's complaint and stating that the complaint was barred by time. On the merits it was said that the respondent had been given possession of 5.5 sq.mts. x 8.25 sq.mts. after which the respondent had constructed the booth at the corner site. As far as the bhatties were concerned, it was stated that they had already been removed. In connection with the allegations regarding the sanction of STD/PCO booth, it was stated that the same had been constructed far away from the booth of the respondent. It was submitted that there was no deficiency in the services and the respondent had not suffered any damage at all. On the contrary, the respondent had defaulted in making the payment of the instalments of the purchase price and the appellant was entitled to recover the same together with interest at 18% p.a.

The State Commission accepted the claim of the respondent and directed the appellant:

"i) to remove the Bhatties belonging to the neighbouring shop-keepers at present lying in front of site of the booth of the complainant;

ii) include the side verandah within the total area allotted to the complainant for the booth site;

iii) to refund to the complainant the proportionate price of the area covered by the verandah by the HUDA authorities;

iv) to submit (sic) the complainant exclusive use of the verandah for the complainants use;

v) to remove the STD/PCO booth from the site of the complainants booth;

vi) to pay a sum of Rs.2,00,000/- by way of compensation for the monetary loss and the mental agony, harassment suffered by him on account of deficiency in service on the part of HUDA;

vii) to revise the accounts by adjusting the payments made by the complainants so far and re-schedule the instalments, if any still found payable by them; and

viii) not to raise any demand for further payment till the compliance of the aforesaid direction is made".

On the appeal of the appellant, the National Commission negatived directions (ii), (iii), (iv), (v), (vii) and (viii) of the State Commission. It was found that there was no deficiency in the service rendered by the appellant as far as the area allotted and the construction of the STD/PCO were concerned. It was found that the side verandah had been included in the total area sold to the respondent and that the PCO booth had been constructed 21 feet away from the booth of the respondent. It was held that the respondent was liable to pay the outstanding instalments of the price to the appellant together with interest as per the HUDA policy @ 14% p.a. However, it noted that the bhatties had been removed during the pendency of the appeal before the National Commission and to that extent it confirmed the State Commission's finding that there was deficiency on the part of the appellant. As such it directed the payment of Rs.2 lacs as compensation to the respondent for "causing agony and hardship and health hazard to the complainant as also their failure to keep the passage clear which they were obliged to do". The appellant was directed to rework the amount payable by the respondent and communicate the same to the respondent which was directed to pay the same within a time frame to the appellant after adjusting the Rs. 2 lacs awarded as compensation.

Both the appellant and the respondent filed two separate special leave petitions from the order of the National Commission. The special leave petition filed by the respondent was dismissed. Therefore, as far as the findings of the National Commission against the respondent are concerned, they are concluded against the respondent. This appeal, on the other hand deserves to be allowed.

Section 24-A of the Consumer Protection Act, 1986 (referred to as the Act hereafter) expressly cast a duty on the Commission admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen.

The Section debars any fora set up under Act, admitting a complaint unless the complaint is filed within two years from the date of which the cause of action has arisen. Neither the National Commission nor the State Commission had considered the preliminary objections raised by the appellant that the claim of the respondent was barred by time. According to the complaint filed by the respondent, the cause of action arose when, according to the respondent, possession was received of the booth site and it was allegedly found that an area less than the area advertised had been given. This happened in January, 1987. Furthermore, the bhatties which were alleged to have caused loss and damage to the respondent, as stated in the complaint, had been installed before 1989 and removed in 1994. The complaint before the State Commission was filed by the respondent in 1997, ten years after the taking of possession, eight years after the cause of alleged damage commenced and three years after that cause ceased. There was not even any prayer by the respondent in his complaint for condoning the delay.

Therefore, the claim of the respondent on the basis of the allegations contained in the complaint, was clearly barred by limitation as the two year period prescribed by Section 24A of the Act had expired much before the complaint was admitted by

the State Commission. This finding is sufficient for allowing the appeal.

Moreover, the National Commission proceeded on the incorrect factual basis that the bhatties had been removed during the pendency of the appeal before it. The finding was contrary to the records. As we have said, according to the complaint itself, the offending bhatties had already been removed in 1994 three years before the complaint was filed by the respondent. Apart from this there was no basis for the Commission to have awarded to Rs. 2 lacs to the respondent by way of compensation.

In the circumstances of the case the appeal is allowed and the decision of the National Commission in so far as it directed the appellant to pay compensation to the respondent is set aside. No order as to costs.

JUDIS