

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA,
PANCHKULA.**

First Appeal No.3645 of 2001.

Date of Institution: 2.11.2001.

Date of Decision: 7.1.2002

Haryana Urban Development Authority through its Estate Officer, Sonapat.

Versus

---Appellant.

1. Sushil Chand Jain
2. Smt. Sushma Jain, Both Residents of H.No.619, Sector-14, Sonapat.

BEFORE:

---Respondents.

Hon'ble Mr. Justice R.C. Kathuria, President.
Mrs. Shakuntla Yadav, Member.

For the Parties: Mr. Amandeep Singh, Advocate for appellant.
None for respondent.

ORDER

R.C. Kathuria, President:

This appeal at the behest of the appellant-opposite parties is directed against the order dated 16.8.2001 passed by the District Consumer Disputes Redressal Forum, Sonapat whereby while accepting the complaint of the respondents-complainants have been given to the opposite parties to give proper opportunity of hearing the complainants in the appeal which was still pending before the Administrator, HUDA, Gurgaon and to decide the appeal within a period of six months from the date of order. At the same time Rs.5,000/- has been awarded as compensation on account of deficiency of service.

Put shortly, the facts of the case are that plot No.619 located in Sector-14, Sonapat was transferred in the name of the complainants on the basis of Civil Court decree dated 9.2.1984 passed by Sub Judge, Sonapat and thereafter it was transferred as per allotment letter No.769 dated 1.3.1988. Thereafter, the complainants applied for occupation certificate but the completion certificate was not issued to him. The complainants were informed that W.C. had been unauthorizedly constructed. Thereafter, the complainants came to know that his file was not traceable with the opposite parties in

the office of opposite party No.1 and the complainants had to submit fresh papers for completion on 21.3.1988. The opposite parties then informed the complainants as per letter bearing Memo No.3690 dated 14.6.1988 that the compounding fee of Rs.11,750/- had been imposed by the Administrator, HUDA. Thereafter, by the said order the complainants filed an appeal against the said order on 28.6.1988 but thereafter as per intimation received, the complainants went to attend the hearing of appeal on 28.9.1988 at Sonapat but on that date the Administrator, HUDA was not available. From that date onwards no decision in the appeal had been taken and the complainants had been requesting the opposite parties to issuing provisional certificate to him in the meanwhile but without any effect. Forced by these circumstances the complaint was filed seeking directions to the opposite parties to issue occupation certificate without depositing penalty/compounding fee of Rs.11,750/- and for regularization of the sewerage connection and further to pay Rs.25,000/- alongwith interest @ 18% per annum on account of litigation expenses. The complaint was contested by the opposite parties. In the written statement filed it was pleaded that the complainants were not the owner of the plot till 1.3.1988 and the previous allottee Smt.Angoori Devi in her letter dated 18.10.1984 had intimated that no structure had been raised on the allotted plot and thereafter the opposite party No.1 had issued show cause notice on 27.3.1985 to Smt. Angoori Devi. It was further maintained that Smt.Angoori Devi never applied for occupation certificate. It was further stated that the complainants had become allottee of the plot on 1.3.1988 and was required to deposit the extension fee after applying for completion certificate. Thereafter, the complainants had applied for occupation certificate on 21.3.1988 and after fulfilling the formalities by the complainants, the building was inspected and the report was sent to the Administrator, HUDA, Gurgaon vide office letter bearing Memo No.1410 dated 6.4.1988 for compounding the case. The Administrator, HUDA, Gurgaon as per letter No.3689-90 dated 14.5.1988 had returned the case to the opposite parties with copy to the complainants for compounding the case subject to deposit of Rs.11,750/- for issue of occupation certificate. Accordingly, the complainants were informed as per letter No.3013 dated 25.6.1988 about the compounding fee but the



[Handwritten signature]

complainants did not pay the said fee and instead filed appeal against the order dated 14.6.1988 to the Administrator, HUDA, Gurgaon. The Administrator, HUDA, Gurgaon as per letter bearing Memo No.4854-55 dated 24.8.1988 informed the complainants the date of hearing of the appeal but the appeal could not be heard at Sonapat and the case filed was again sent to Administrator, HUDA, Gurgaon on 23.10.1989 and the same was returned on 1.2.1990 with the remarks that the completion case was returned after compounding the violation over the plot. It was further directed by the Administrator to the opposite parties to issue occupation certificate after receiving compensation fee of Rs.11,750/-. Thereafter, the complainants were informed as per letter dated 6.9.1990 for deposit of the compounding fee but the complainants did not deposit the said amount followed by reminder issued by the opposite party No.1 vide letter dated 1.9.1996. The complainants did not deposit the demanded amount and for that reason the provision of sewerage connection could not be issued to him till actual issuance of occupation certificate to the allottee. At the same time other pleas of locus standi and the complaint being barred by limitation were also raised. Taking into account the above stated pleadings of the parties and evidence adduced on record the District Forum issued directions in its order dated 16.8.2001 noticed above. Hence, the present appeal by appellant-opposite parties.

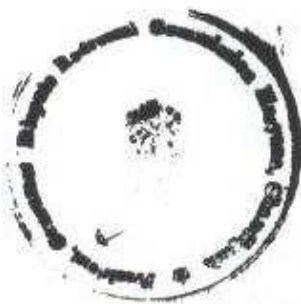
Learned counsel representing the appellant-opposite parties has been heard at length. None has chosen to appear to argue the matter from the side of the respondent-complainants.



Learned counsel representing the appellant-opposite parties at the threshold of arguments contended that the District Forum had committed illegality in entertaining the complaint because the complainants themselves have admitted in the complaint that they had filed appeal before the Administrator, HUDA, Gurgaon against the order dated 14.6.1988. He has further contended that simply because at the time the complaint was filed, the appeal was not decided that would not vest any jurisdiction in the District Forum to entertain the appeal and for the delay the complainants were required to seek remedy as required under the law. There is considerable merit in the submissions made.

The position of law in this regard has been well settled in case **SURINDER MOHAN versus MUNICIPAL CORPORATION & ANR. III(2006) CPJ 136 (NC)**, wherein it was observed that the complainant before filing the complaint before the District Forum for the alleged deficiency for not providing the basic amenities, had also filed a representation before the Chief Administrator, which was dismissed. The revision petition filed against the said order was dismissed by the Advisor to the Administrator. It was held that the Present Commission was not the revisional or appellate authority against the order passed by the Advisor to the Chief Administrator, U.T. Chandigarh. It would be appropriate to refer to the discussion contained in Paras No.5 and 6 of the order as under:-

- "5. As per memo of appeal filed before us, it is clear as per para 2 of the memo of appeal that the allotment of booth was cancelled by the respondent Estate Officer for non-payment of the premium. Appeal against which was filed before the Chief Administrator, which was dismissed in the year 1998. Aggrieved by this order, a revision petition was filed before the Advisor to the Administrator, U.T. Chandigarh which as per statement given before us by the learned Counsel for the appellant has also been dismissed by the Advisor to the Administrator. It is an admitted position that in this revision petition alongwith other grounds, the question of lack of basic amenities was also agitated by the appellant.
6. There is no doubt that Section 3 of the Consumer Protection Act, 1986 provides additional remedy for redressal of grievance of a consumer. But it does not envisage and this Commission has not been supporting 'forum-hopping' by a consumer. If a certain route has been adopted, of their own volition, by a consumer, then he has to pursue his remedy to the end from that agency. In this case, admittedly the order of the cancellation and lack of amenities was agitated before the Chief Administrator, U.T. Chandigarh who dismissed the appeal. Revision Petition was filed against that order which also contained 'relief' with regard to lack of amenities which has also been dismissed. This Commission is not a revisional or appellate authority against the order passed by the Advisor to the Chief Administrator, U.T. Chandigarh"



Handwritten signature

On the basis of above observations the appeal was dismissed besides on the ground of limitation. The ratio of the above mentioned case would fully apply to the facts of the present case because the complainants have voluntarily invoked the jurisdiction of the Administrator by filing an appeal as admitted by them in the complaint. The complainants were duty bound to take into account the legal position that the District Forum cannot sit over the order of the appellate authority as a revisional/appellate authority and to issue directions. The District Forum on the face of record exceeded its jurisdiction vested under the law. That being so, the order of the District Forum, as such, cannot be sustained and consequently while accepting the appeal the impugned order is set aside and the complaint is dismissed.

Announced: 7.2.2008

NO. 3645 of 2001

VED

Sd/-

Justice R.C. Kathuria
President

Sd/-

Mrs. Shakuntla Yadav
Member

3645/01
7.2.08
4.3.08
1.3.08
5. Dec 2007

Bingh
Signature with date
4/3/08

Certified
Bingh
Dispute
Haryana, Chandigarh