

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. NC/RP/3154/2012

(Against the Order dated 24th January 2012 in Appeal 147/2005 of the State Consumer Disputes Redressal Commission Haryana)

SHAMSHER SINGH MALIK

PRESENT ADDRESS - S/o Ramchander R/o Gohana , Sonapat , Haryana ,

.....Petitioner(s)

Versus

HUDA

PRESENT ADDRESS - Through its Estate Officer , Sonapat , Haryana ,

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI , PRESIDENT

HON'BLE MR. BHARATKUMAR PANDYA , MEMBER

FOR THE PETITIONER:

FOR THE PETITIONER

: MR. MADHURENDRA KUMAR, ADVOCATE

FOR THE RESPONDENT:

FOR THE RESPONDENT

: MR. VIVEK GUPTA, ADVOCATE

DATED: 03/03/2025

ORDER

PER A.P. SAHI, J., PRESIDENT

IA/334/2019 (Delay Condonation Application)

Heard Mr. Madhurendra Kumar, learned counsel for the petitioner/complainant, and Mr. Vivek Gupta, learned counsel for the respondent/HUDA.

There is a reported delay of 93 days in the filing of the revision petition.

Cause shown in the application is sufficient. The delay is condoned and the revision petition shall be treated to have been filed within time.

The application stands disposed off.

Revision Petition

The present revision petition centres around a dispute of the allotment of a plot by respondent/HUDA. The petitioner/complainant raised a grievance by filing Complaint Case No. 65 of 2003 before the DCDRC Sonapat (hereinafter referred to as the District Commission) that he has been deprived of his plot and the physical delivery of the plot has not been offered, as such the petitioner/complainant had tendered a legal notice on 15.01.2003 seeking possession of the plot and having failed to achieve the same, the complaint had been filed. He alleged that due to this default on the part of the respondent/HUDA in having failed to deliver the plot, it resulted in substantial loss as he could not raise constructions and this loss of time increased the cost of labour charges and other construction material and also caused a lot of harassment to the petitioner/complainant, as such the prayer made in the complaint was as follows:

“It is therefore prayed that by accepting the complaint of the complainant an amount of Rs.1,50,000/- (Rupees One Lakh fifty thousand only) be awarded as compensation as loss caused by the respondent to the complainant in the interest of justice. Any other relief Hon’ble Forum deems fit and proper be also awarded to the complainant. It is further prayed that the respondent be directed to hand over the physical possession of the plot immediately.”

The District Commission after exchange of pleadings and evidence came to the conclusion that there was deficiency in service as the plot had not been delivered and accordingly allowed the complaint by directing delivery of possession as well as Rs.3,00,000/- for escalation charges of building material and labour charges, Rs.5,000/- for causing unnecessary harassment, Rs.2,000/- for litigation expenses, Rs.1,600/- per month from October 2001 till actual physical possession of plot as rent because the petitioner/complainant had to reside in a rented house, and with a direction to pay the same within 30 days from the date of the order.

The respondent/HUDA filed First Appeal No. 147 of 2005 before the SCDRC Haryana (hereinafter referred to as the State Commission) in which an interim order was granted and the appeal was finally allowed on 24.01.2012 reversing the order of the District Commission holding that the physical possession of the plot had already been offered for which reliance was placed on the certificate dated 22.09.2003 and the consequential letter dated 29.09.2003. It was also held that the issue of size of the plot also stood resolved and therefore there was no delay and hence the complaint was liable to be dismissed. Accordingly, the appeal was allowed.

The petitioner/complainant aggrieved by the said order has come up in this revision petition contending that the complaint could not have been dismissed as admittedly physical possession had not been handed over and there was a substantial delay in the handing over of possession that too even of an undeveloped plot. It was also contended that inspite of the substantial payments having been made and instalments having been deposited in time, the physical possession was not delivered and consequently the order of the District Commission ought not to have been reversed by the State Commission.

Learned counsel for the respondent/HUDA however submitted that the allegations are absolutely false and that the possession had been offered and in order to satisfy this Commission about the genuine stand of HUDA, an affidavit was filed before this Commission on 19.09.2023 stating clearly that the plot was still available of the 375 sq. meters.

It is further submitted that there was no delay and therefore the State Commission has rightly allowed the appeal as the District Commission could not have awarded any possession in the absence of any delay or any other deficiency for that matter on the part of HUDA.

We have considered the submissions raised and we find that the respondent/HUDA even today is ready and willing to offer the plot to the petitioner/complainant subject to the clearance of the dues as per the scheme. The affidavit of Mr. Vijay Kumar, Estate Officer of

HUDA, dated 13.09.2023, filed before this Commission on 19.09.2023 is extracted hereunder:

“Affidavit

I, Vijay Kumar, Estate Officer, HSVP Sonipat, do hereby solemnly affirm and declare as under:-

1. That the present Revision Petition is pending before the Hon'ble Commission and is fixed for 19.09.2023 for final hearing.
2. That the Hon'ble Commission vide order dated 05.07.2023 has passed the following orders:

“Ld. Counsel for the petitioner shall file their Written Synopsis two weeks prior to the next date of hearing.

List the matter on 19.09.2023 for Final Hearing.

In the meantime, Ld. Counsel for the Respondents shall file an affidavit, within six weeks' to the effect that the plot in question is vacant.”

3. That as per the report of J.E. posted in the O/o Estate Officer, HSVP Sonipat **the area of the plot no. 891-P Sector-7, Gohana** as per site and approved demarcation plan **is 375 sq. mtr.** The possession certificate for area 375 sq. mtr. has already been issued vide this office memo no. 1210 dated 28.01.2002. Copy of the possession certificate is attached as annexure R-1.
4. The **said plot stands in the name of original allottee i.e. the complainant sh. Shamsheer Singh and the same is not transferred yet.**
5. As per the report of J.E. posted in the office of the deponent dated

29.08.2023, **the plot is vacant as per the site visit and demarcation plan.**

Sd/-

Deponent

ESTATE OFFICER

H.S.V.P., SONEPAT”

The question therefore is as to whether there was denial on the part of respondent/HUDA in delivering the possession of the plot. The complaint was filed with very simple and plain allegations and a copy of the complaint is on record. The complaint was entertained and notices were issued after being instituted on 14.02.2003. After the filing of the complaint, there are certain admitted communications on record. The first is the report of the Jr. Engineer Mr. D.K. Malik, dated 22.09.2003, extracted hereunder:

“Sub:- Regarding physical possession of Plot No. 891-P, Sector-7, Gohana

On dated 25/8/2003 in the presence of Executive Engineer, HUDA, Division Sonapat, District Town Planner, Sonapat, S.D.E. Sub Division No.2, Sonapat and Sh. Shamsheer Singh the allottee of Plot No. 891-P, Sector-7, Gohana **it was decided to give the Nishan to the allottee as per approved demarcation plan and I went with the allottee for giving Nishan at site but he refused to take Nishan at site on dated 25/8/2003.** It is for your kind information and necessary action please.

Dated : 22/9/2003

(D.K. Malik)

J.E.

HUDA, Sonapat”

This is followed by a letter addressed to the petitioner/complainant on 29.09.2003

extracted hereunder:

“From

The Estate Officer,
HUDA, Sonapat.

To

Sh. Shamsheer Singh Malik S/o
Sh. Ram Chander Malik
Veterinary Hospital,
Village and Post Office Gudha,
Teh. Gohana Distt. Sonapat.

Memo No. 13225

Dated 29/9/2003

Sub:- Regarding Physical Possession of Plot No. 891-P, Sector-7, Gohana.

It has come to the notice of undersigned that you have refused for taking physical possession of the above mentioned plot at site as per approved demarcation plan as decided by the following officers/official on dated 25/8/2003.

1. XEN, HUDA, Division, Sonapat.
2. DTP, Sonapat.
3. SDE, HUDA, Sub Division No.2, Sonapat.
4. Sh. D.K. Malik, J.E., HUDA, Sonapat.

You are, again requested to take physical possession from Sh. D.K.

Malik, J.E. by visiting this office personally or authorized any person on any working day during office hours.

Sd/-

Estate Officer,

HUDA, Sonapat

Endst No. 13226

Dated 29/9/2003

A copy of the above alongwith a report dated dated 22/9/2003 submitted by Sh. D.K. Malik, J.E. is forwarded to Sh. Satyawan Mann, Advocate, Distt. Courts, Sonapat for information and necessary action please. It is also requested that the **Hon'ble Forum of DCF, Sonapat may be apprised accordingly.**

DA/As above.

Sd/-

Estate Officer,

HUDA, Sonapat”

The petitioner/complainant admittedly responded to the said letter on 13.10.2003 which is extracted hereunder:

“From

Sh. Shamsheer Singh Malik S/o

Sh. Ram Chander Malik,

Veterinary Hospital,

Village and Post Office Gudha,

Near Gohana, Distt. Sonapat

To

The Estate Officer,
HUDA, Sonapat.

Sub: Regarding Physical Possession of Plot No. 891-P Sector-7, Gohana.

Sir,

In reference to your letter No. 13225 dated 29.9.003, I hereby submit you the following reply of your above mentioned above.

1. That **myself have filed a complaint against you District Consumer Forum at Sonapat** and before filing of this complaint my-self have written to you several letters regarding to deliver the physical possession of the allotted property but you have not cared for that and the resulting myself **suffered a big loss due to raising of price of other commodity.**
2. That now **in order to escape the liability which is likely to be affixed upon you and inorder to create false evidence you have written this false letter the false averments.**

So, I hereby submit to you the following reply with the information that **now I will initiate my action as per the decision of District Consumer Forum Sonapat.**

Dated: 13.10.2003

Yours faithfully,

Shamsher Singh Malik

Vety. Hospital,

Vill. Gudha Teh. Gohana

Distt. Sonapat"

It is in this background that we find that the offer of possession of plot no. 891-P, Sector-7, Gohna, District Sonapat, was offered to the petitioner/complainant for an area of 375 sq. meters. This also indicates that the area that was somewhat in dispute, as of 258.8 sq. meters, was measured once again and the demarcation plan was approved and decided on 25.08.2003 by four officials as recorded in the letter dated 29.09.2003. The contents of the letter have not been challenged and after receipt, the reply given by the petitioner/complainant on 13.10.2003 recites a bald allegation referring to the letter as a false letter with a view to create false evidence.

We have not been able to gather as to how the contents of the letter dated 29.09.2003 are false or have been created in order to produce false evidence. This allegation of the petitioner/complainant in his reply dated 13.10.2003 appears to be baseless and cannot be accepted. Thus, it is established on record that possession had been offered once again on 25.08.2003 and thereafter the petitioner/complainant was once more called upon to take physical possession vide letter dated 29.09.2003.

In the wake of this documentary evidence on record, the conclusion of the District Commission that there was failure to offer physical possession does not appear to be correct. This offer of possession was done during the pendency of the complaint itself which aspect has been completely overlooked by the District Commission while deliberating on facts in its order dated 24.11.2004. The District Commission has assumed a default on the part of respondent/HUDA even though there might have been some delay on account of shifting of a road after approval of the revised plan. Nonetheless, to ignore these documents and information as accepted by the petitioner/complainant in his letter dated 13.10.2003 resulted in an erroneous conclusion drawn by the District Commission.

However, the District Commission was justified in issuing a direction for handing over

the physical possession of the plot, inasmuch as this action in 2003 as noted above was carried out after the complaint had been filed.

We therefore do not find any justification for the District Commission to have granted Rs.3,00,000/- as escalation charges and rise in prices of building material of labour charges. In our considered opinion, when the possession had been offered during the pendency of the complaint itself within a few months of its filing, there was absolutely no occasion to have awarded escalation or charges on account of any rise in prices of material and labour.

Further, there was no reason to have awarded Rs.1,600/- per month as rent from October 2001 till actual physical possession when the possession had already been offered and again confirmed in 2003 itself. This direction was therefore unjustified. The plot had been allotted in August 2001 and had been also offered for possession subject to the clearance of the dues as noted hereinabove. The award of interest @ 12% per annum on the amount paid by the petitioner/complainant also does not appear to be justified from the date of allotment till the date of actual physical possession. As noted above, the District Commission had overlooked the aspects pertaining to offer of possession and consequently proceeded to make awards that were not justified.

However, on the other hand, the State Commission proceeded to dismiss the entire complaint. This also in our opinion is unjust, inasmuch as the petitioner/complainant had been allotted and had made substantial payments, as such he was entitled for delivery of possession as directed by the District Commission. Consequently, the dismissal of the complaint is denial of the relief of deficiency in service on the part of the respondent/HUDA. It is evident that the issue with regard to the area of plot and other issues were clarified as recorded in the letter dated 29.09.2003 quoted hereinabove. Thus, for all intents and purposes, the offer of physical delivery and possession of the plot had been made once again on 22.08.2003 and confirmed by a whole team of responsible officials on 29.09.2003. This

fact is further fortified by the affidavit filed by the respondent/HUDA before this Commission in 2023 and extracted hereinabove. Consequently, for all these reasons, the complaint ought to have been allowed for a direction to deliver the actual physical possession of the plot in question to the petitioner/complainant as directed by the District Commission.

Coming to the issue of delay, we find that possession was to be offered as per clause-7 of the letter on completion of development work in the area and was to be delivered within 90 days of the date of the letter of allotment. The letter of allotment is dated 30.08.2001. The tentative price of the plot was indicated therein and the balance amount of the tentative price was to be paid in lump-sum within 60 days or in 6 equal annual installments payable in terms thereof. We are however not called upon to adjudicate these calculations even though Mr. Madhurendra Kumar urged that direction should be issued to the respondent/HUDA not to charge any interest or any other related charges pertaining to the dues against the plot. We are not impressed by this argument, inasmuch as the allotment had been made under a scheme and therefore if there is any unpaid amount, the same has to be paid by the petitioner/complainant as he seeks physical possession of the plot.

This revision petition deserves to be allowed with a direction for the physical delivery of the plot to be handed over to the petitioner/complainant and the petitioner/complainant shall clear the dues as per the scheme applicable on the terms and conditions of the allotment itself.

We accordingly set aside the impugned order of the State Commission that has dismissed the complaint but at the same time we also modify the order of the District Commission by setting aside the directions given for compensation and other reliefs while maintaining the relief of delivery of actual physical possession of the plot in question that shall be handed over within three months. The complaint and this revision therefore stands accordingly allowed to the aforesaid extent.

The revision petition stands disposed off with the directions above.

.....J
A. P. SAHI
PRESIDENT

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BHARATKUMAR PANDYA
MEMBER