

**SUPREME COURT OF INDIA**

Haryana Urban Development

Vs.

Viresh Sangwan & Anr.

C.A.No.9691 of 2011

(G.S. Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.,)

08.11.2011

**JUDGMENT**

SLP(Civil)No.33789 of 2010

1. Whether the appellant - Haryana Urban Development Authority (HUDA) is obliged to ensure that no encroachment is made on the plot allotted by it after possession thereof has been delivered to the allottee is the question, which arises for consideration in this appeal filed against the order of the National Consumer Disputes Redressal Commission (for short, 'the National Commission') whereby the revision filed by the appellant was dismissed and the orders passed by the State Consumer Dispute Redressal Commission, Haryana (for short, 'the State Commission') and District Consumer Disputes Redressal Forum, Gurgaon (for short, 'District Forum') were approved. Plot No. 478 (measuring 335.50 square meters), Sector 12-A was allotted by the competent authority of HUDA to Shri Champat Jain in January 1986 subject to the terms and conditions specified in allotment letter dated 23.1.1986 issued under Regulation 5 (3) of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 (for short, 'the Regulations'). The possession of the plot was handed over to Shri Champat Jain on 27.2.1998 by Shri Om Prakash, Junior Engineer, HUDA, Gurgaon. The allottee accepted the possession and signed the possession certificate, the relevant portions of which are extracted below "POSSESSION CERTIFICATE Certified that I Om Prakash Junior Engineer Office of the Estate Officer, Gurgaon have carefully check the relevant paper and the Dimension of plot no. 478 sector 12-A Urban Estate Gurgaon and the size of the plot allotted to Shri Champat Jain s/o \_\_\_\_\_ is given as under:-

“1. Length of the plot 22.0 m

2.Breadth of the plot 17.0+13.50 - 15.25 m

3. Area 335.50 sq.m.

4. Rear set Back As per demarcation plan

5. Front set Back Accordingly, on the basis of above details the possession of the plot has been given to the said allottee/Authorised person.

Sd/-

Junior Engineer For Estate Officer HUDA, Gurgaon. I Champat Jain s/o Sh. J.C Jain the above named allottee of the Urban Estate, Gurgaon have taken the possession of the said plot as per above dimension, as allotted to me vide Estate Officer Allotment letter No. 1309 dated 23.01.1986. As per the provision of Regulation 10 of the HUDA (Erection of Building) Regulations, 1979, I hereby note that I will give at least one week's notice to the Estate Officer before actually commencing the erection of the building on the said site. Memo No. 1477 Dated 27.02.1998 Name & signature of allottee"

2. After some time, Shri Champat Jain sold the plot to Devender Yadav and Narender Yadav (both sons of Karan Singh) and revised allotment letter dated 17.11.1999 was issued in their names. After 6 years and 2 months, conveyance deed dated 18.1.2006 was executed between HUDA acting through Estate Officer, Gurgaon and the transferees as per the requirement of Regulation 20 of the Regulations. Within a week of the execution of conveyance deed, the transferees sold the plot to the respondents by registered sale deed dated 24.1.2006 and re-allotment letter dated 3.3.2006 was issued in their favour. At the time of execution of the sale deed, the respondents did not raise any objection about the total area of the plot or any encroachment made by the villagers. Even after receiving the re-allotment letter, they did not make a grievance about the encroachment allegedly made by the villagers. However, after 1 year and 3 months, they filed a petition under Section 12 of the Consumer Protection Act, 1986 for issue of a direction to HUDA to allot alternative plot to them by asserting that there was deficiency in service inasmuch as the actual area of the plot re-allotted to them was less than 335.50 square meters and there was encroachment on the plot. In support of their plea, the respondents relied upon report dated 20.4.2007 allegedly prepared by the Junior Engineer of HUDA. In the reply filed on behalf of the appellant, the respondents' assertion about fresh demarcation of the plot by the Junior Engineer was disputed and it was denied that gates of two houses of inhabitants of the village were found in the area of the plot and chabutra and chhajja had been constructed over the plot. It was also denied that the plot was being used as passage and the Junior Engineer had expressed his inability to get the encroachments removed. By an order dated 19.11.2009, the District Forum allowed the petition of the respondents and directed the appellant to allot them alternative plot of the same size in the same sector or in an adjoining sector. For coming to the conclusion that the plot re-allotted to the respondents had been encroached, the District Forum relied upon report dated 20.4.2007 of the Junior Engineer. This is evinced from the following portion of order dated 19.11.2009: "A perusal of case file shows that re-allotment letter bearing no. 1280 dated 03.03.2006 regarding plot no. 478, Sector 12-A measuring 335.50 Sq. Mtrs. was issued in favour of the complainants. A perusal of report dated 20.04.2007 given by Junior Engineer shows that he has gone to the plot No.478, Sector 12-A for demarcation. After giving demarcation it was

found that the doors of the houses of the villages were opened in the plot no. 478 Sector 12-A, Gurgaon and Chabutra and Chajje also existed there. The owners of those houses were creating obstruction in the demarcation of the plot no. 478 as there was no way going to their houses. Previously, a rasta of the village existed at that place. In view of the above said report given by the junior engineer of the opposite parties, we hold that there was deficiency in service on part of the opposite parties. The complainants are entitled to an alternate plot of the same size in the same sector i.e. Sector 12-A or in a sector adjoining Sector 12-A on the same rates. The present order is ordered to be complied with within one month from the date of passing of this order. File be consigned to the records after making due compliance."

The State Commission dismissed the appeal by simply repeating the observations made by the District Forum that as per the report of the Junior Engineer, there was encroachment on the plot allotted to the respondents.

3. The National Commission negated the appellant's challenge to the order of the State Commission and dismissed the revision filed by the appellant.

4. We have heard Ms. Anubha Agarwal, learned counsel for the appellant and Mr. Gagan Gupta, learned counsel for the respondents and carefully scrutinized the record.

5. In our view, the finding recorded by the District Forum that there was deficiency in service on the appellant's part is ex facie erroneous and the State Commission and the National Commission committed serious error by confirming the direction given by the District Forum for allotment of alternative plot to the respondents. Unfortunately, none of the consumer forums adverted to the fact that possession of the plot was delivered to the original allottee Shri Champat Jain on 27.2.1998 free from all encumbrances and there is no provision in the Haryana Urban Development Authority Act, 1977 and the Regulations for redelivery of possession to the transferees. One can easily visualise that after taking possession of the plot allotted to him, Shri Champat Jain did not take steps to protect the same and by taking advantage of his absence at the site, the people from the neighbouring areas may have opened their doors towards the plot or made some encroachment. However, the appellant cannot be blamed for the encroachment, if any, made after possession of the plot was delivered to the original allottee. The respondents must have executed the sale deed after inspecting the site. If there was any encroachment or the area of the plot was less than the one specified in the allotment/re-allotment letter, they would have immediately lodged a protest with the vendor. However, the fact of the matter is that the respondents did not raise any objection in this regard and by taking shelter of a manipulative report prepared by the Junior Engineer, they filed complaint and succeeded in convincing the District Forum to ordain allotment of an alternative plot.

6. In our considered opinion, the appellant cannot be held responsible for the encroachment, if any, made after possession of the plot had been delivered to Shri Champat Jain and neither Devender Yadav and Narender Yadav, who purchased the plot from Shri Champat Jain nor the respondents could possibly accuse the appellant of deficiency in service in the matter of allotment of plot on the ground that some people had made encroachment on it.

In the result, the appeal is allowed, the impugned order as also orders passed by the District Forum and the Sate Commission are set aside and the complaint filed by the respondents is dismissed. The parties are left to bear their own costs.