

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 258 OF 2011

1. ARMY WELFARE HOUSING ORGANISATION

Through It's Managing Director Maj. Gen. S. Narasimhan.,
South Hutments, Kashmir House, Rajaji Marg

NEW DELHI - 110 011.....Complainant(s)

Versus

1. CHIEF ADMINISTRATOR, HUDA & ANR.

Haryana Urban Development Authority,
PANCHKULA,
HARAYANA

2. THE ESTATE OFFICER

Haryana Urban Development Authority,
AMBALA CITY,

HARYANA.....Opp.Party(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

FOR THE COMPLAINANT : MR. A.K. TEWARI, ADVOCATE
MR. YOSHA DUTT, ADVOCATE

FOR THE OPP. PARTY : MR. VISHAL MAHAJAN, ADVOCATE
MR. ANIL KUMAR, ADVOCATE

Dated : 09 June 2023

ORDER

1. The present Complaint is filed by Army Welfare Housing Organization (AWHO) hereinafter referred to as "the Complainant". The Complainant is a Society registered under the Societies Registration Act, 1860 having its registered office at Rajaji Marg, New Delhi. The Complainant provides dwelling units to serving and retired Army personnel and their widows on 'No Profit No Loss" basis.
2. The case of the Complainant is that they were allotted 5 acres land in Group Housing Plot No.4 (GH-4) in Sector 9, Ambala City by the Opposite Parties/Haryana Urban Development Authority (in short 'HUDA') vide allotment letter No.21417 dated 08.07.1991, for Rs.1,58,48,000/-. Possession of the land was handed over on 08.02.1993. The Complainant made final payment to the Opposite Parties on 05.07.1996. The Opposite Parties, vide letter dated 08.01.1997, demanded an additional amount of Rs.5097990.78 on the ground of enhanced compensation pursuant to judgment dated 06.05.1992 of Ld. Additional District Judge, Ambala, which was allegedly deposited by the Opposite Parties in the Court. The Opposite Parties, never informed the Complainant till the last date of payment i.e. 05.07.1996 that an additional amount was to be paid by the Complainant in terms of judgment dated 06.05.1992 of Learned Additional District Judge, Ambala. The Opposite Parties did not give any

explanation as to why the order of the learned Additional District, Judge, Ambala City dated 06.05.1992 was suppressed from the Complainant. The Complainant, however, paid enhanced compensation as determined pursuant to a judgment/award dated 06.05.1992 passed by the District Judge, Ambala. The order of the District Judge, Ambala is dated 06.05.1992 and the Opposite Party made demand, vide letter dated 08.01.1997, after expiry of more than six years. Moreover, the compensation awarded by the District Judge, Ambala was much lesser than the demand made by the Opposite Parties. The Complainant sent legal notice dated 28.5.1997 to Opposite Parties seeking clarification of the highly inflated, illegal and arbitrary demand dated 08.01.1997. The Opposite Parties instead of giving clarification/justification of the demands, vide letter dated 18.06.1997, threatened the Complainant to impose further penalty of 10% on the demand dated 08.01.1997. The Opposite Parties had also illegally charged for the land which fell under green belt. The Complainant, vide letter dated 30.03.1999, requested the Opposite Parties to exclude the green belt of 30 meter width from the allotment of land and adjust/set off the cost thereof, as had been done in the allotment of land to Telecom Department Group Housing Plot. The Opposite Parties, however, did not reply to the said letter. On the contrary, the Opposite Parties, vide letter dated 30.06.2000, raised further demand of Rs.10,75,812/-. The Complainant deposited the said amount alongwith interest on 18.08.2000 under protest. Thereafter, the Opposite Parties made third demand of Rs.23,44,289/-, vide letter dated 16.10.2005 and fourth demand of Rs.1,28,00,999/-, vide letter dated 15.01.2008 which were paid by the Complainant under protest. The total amount of compensation demanded by the Opposite Parties was more than the actual cost of land. The Complainant filed Case No: CA-59/2008 before the MRTP, which was dismissed for want of jurisdiction. Alleging deficiency in service and unfair trade practice on the part of the Opposite Parties, the Complainant filed the Consumer Complaint with the following prayer: -

“In view of the above, it is most respectfully prayed that in the interest of justice, this Hon'ble Commission may be pleased to:

- a. direct the Respondents No. 1 & 2 to pay / refund the following sums which have been paid by the petitioner / AWHO on account of enhanced compensation etc to the respondents so far:- alongwith interest @ 18% per annum compounded annually with effect from the dates of payments / effect till the filing of this petition :-*
- i. Rs.72,27,261/- (Rupees seventy two lacs twenty seven thousand two hundred and sixty one only) paid on 20 Jun 2000 on account of first enhanced compensation and interest thereon.*
- ii. Rs.10,98,285 (Rupees ten lacs ninety eight thousand two hundred and eighty five only) paid on 18 Aug 2000 on account of shortfall of first enhanced compensation.*
- iii. Rs.23,44,289.50 (Rupees Twenty three lacs forty four thousand two hundred eighty nine and paise fifty only) on 10 Jan 2006 on account of second enhanced compensation.*
- iv. Rs 1,28,00,999/- (Rupees one crore twenty eight lacs nine hundred ninety nine only) w.e.f 13 Feb 2008 on account of third enhanced compensation.*
- v. Rs.72.19,800/- (Rupees seventy two lacs nineteen thousand and eight hundred only) on account of cost of 4000 sq mtrs of land falling in green belt for which land cost and*

enhanced compensations had been paid by petitioner / AWHC to respondents.

vi. Refund the interest paid by the petitioner / AWHO on First and Second enhanced compensation from September 1994 to 07 January 1997 alongwith 18% interest per annum amounting to Rs.47.47,143/- as on 29 Feb 2008).

b. Pendentelite interest @ 18% per annum from the date of filing of this petition till the recovery of the amount as stated in paragraph No (a) above

c. Cost of the petition.”

3. The Opposite Parties resisted the Complaint by filing reply stating that the Complaint was not maintainable as the Complainant was not a “Consumer” under Section 2 (1) (d) of the Consumer Protection Act, 1986. The Complainant was legally bound to pay the enhanced compensation in terms of terms & condition of the allotment letter and the provisions of the HUDA Act, 1977. The Complainant is seeking refund of the amount of enhanced compensation paid from 1994 to 1997, 2000 and 2006 etc. and the Complaint filed in 2001 was barred by limitation. The Complainant sought refund of the amounts paid by them. It is nothing but a suit for recovery, which is not maintainable before the Consumer Court and the appropriate forum is a Civil Court. The Complaint is also barred by Clause No.22 of the allotment letter, which provided for reference of disputes to arbitration.

4. On merits, it was stated that the Complainant was legally obligated to pay increased compensation as per terms & conditions of the allotment letter. The Complainant's case was already rejected by Hon'ble Punjab and Haryana High Court in CWP No. 16328/1993, vide judgement dated 18th September, 1996 holding that the allottee could not insist on an opportunity of hearing before assessing the enhanced price because this requirement neither flows from the statute nor on the basis of equity because the matter was purely of calculation of an additional price. It was submitted that enhanced compensation awarded by the competent Court was demanded as per Clause No.9 of the allotment letter. The Complainant was allotted land on 07.08.1991, whereas the Court awarded enhanced compensation for the first time on 09.10.1991 and 05.06.1992, i.e., after allotment of land. The total payment of enhanced compensation paid to landowners upto September 1994 was Rs.8.23,23.526/-. The rate of enhanced compensation worked out at Rs.213.18 per sq. yd. Interest payable to the land owners @ 15% was also charged from the Complainant as per Land Acquisition Act, which was absolutely legal and valid. The Complainant's land included a 30 metre wide strip to be kept as green belt or open space in accordance with sector layout plan and the site's approved zoning plan. However, the benefit of green belt area was also clarified and given to the Complainant. The total number of dwelling units and overall density on the plot was calculated for the total of 5.0 acres plot including the land under the said green belt. The Complainant paid the land cost at the rate of Rs.792.50 per sq. mt., which was applicable for a density of 200-250 persons per acre (PPA), whereas the rate for higher density (251-400 PPA) was Rs.1063.25 per sq. mts. Given the benefits of area/FAR/rate/density for a full 5.0-acre plot, the Complainant was required to pay for the strip of land that was an integral part of allotted site. The Complainant constructed the buildings upto rear set back line and an underground water storage tank had also been constructed in the green belt area maintained as rear set back in the plot despite intimation, vide letter No.2879 dated 31.05.2000. Second enhancement was demanded on the basis of further payment of Rs.49,00,8,474/- made by the

Opposite Party to the land owners, which worked out at Rs.98.03 per sq. yard. Opposite Parties had charged the enhanced compensation as per the terms and conditions of the allotment letter and according to Rules and Regulations of the Authority. The Complaint was frivolous and vexatious and liable to be dismissed with cost.

5. Heard the Learned Counsel for the Parties and carefully perused the record. Learned counsel for Complainant submitted that they were allotted 5 acres of land in Group Housing Plot No.4 (GH-4) in Sector 9, Ambala City by the Opposite Parties in 1991 and possession was handed over in 1993. The Complainant was later asked to pay an additional amount by HUDA for enhanced compensation allegedly deposited by HUDA in Court. The Complainant paid the last and final payment in 1996, but HUDA demanded an additional amount in 1997. The Complainant argues that HUDA had no right to demand this additional amount at such a belated stage and never informed the Complainant about the additional cost. The Complainant had already paid the enhanced compensation as determined by the Court. The Complainant sent a legal notice to the Opposite Parties in 1997, seeking clarification of the basis of the enhanced demand. The Opposite Parties arbitrarily imposed 10% penalty on the demanded amount. The Complainant requested the Opposite Parties to exclude the green belt of 30 meters width from the allotment of land and adjust/set off the cost, as was done in case of allotment of land to Telecom Department Group Housing Plot.

6. Learned Counsel for the Opposite Parties submitted that the Complaint was not maintainable under the Consumer Protection Act, 1986 as the Complainant was not a Consumer under Section 2 (1) (d) of the Consumer Protection Act, 1986. The Complainant paid the enhanced amounts in 1994 to 1997, 2000 and 2006 etc. and the Complaint was filed in 2011 after expiry of more than six years, which was barred by limitation. Learned Counsel relied on a judgment of the Hon'ble Supreme Court **Ms. Agriculture Industries 2009 CTJ 481 (SC)** and submitted that if the Complaint is barred by limitation, the Consumer Court cannot decide the case on merits. The Complainant is seeking refund/recovery of the amount paid by them. The Complaint is nothing but a suit for recovery, which is not maintainable before the Consumer Court and it is maintainable before a Civil Court. The Complaint also involves complicated questions of fact which can be adjudicated by an appropriate Civil Court and not by the Consumer Forum in summary proceedings. Clause No.22 of the allotment letter provided that any dispute between the Parties shall be adjudicated by way of arbitration. The Consumer Complaint was, therefore, barred by clause 22 of the allotment letter and not maintainable before this Commission.

7. On merits, learned Counsel for the Opposite Parties submitted that the Complainant was legally bound to pay the amount of enhanced compensation in terms of the allotment letter and the provisions of the HUDA Act, 1977. Learned Counsel submitted that the Complainant was fully aware of its liability to pay the enhanced compensation, the conditions of which were incorporated in the allotment letter. Learned Counsel denied that the enhanced compensation charged at Rs.10,31,791.20 was included in the tentative cost of the land. Liability to pay the additional premium was clearly specified in Clause 10 of Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978, which was payable within 30 days from the date of demand without interest. As the Complainant failed to pay the amount within 30 days, the Opposite Party imposed interest

thereon. It was submitted that payment of the actual cost of the land or possession of the site was immaterial, having no relevance to the issue of payment of enhanced compensation.

8. Facts of the case are that the Complainant was allotted 5 acres land in Group Housing Plot No.4 (GH-4) in Sector 9, Ambala City, by the Opposite Parties/Haryana Urban Development Authority (in short 'HUDA') vide allotment letter No.21417 dated 08.07.1991 for Rs.1,58,48,000/-. Possession of the land was handed over on 08.02.1993. The Complainant made final payment to the Opposite Parties on 05.07.1996. The Opposite Parties, vide letter dated 08.01.1997, demanded an additional amount of Rs.5097990.78 on the ground of enhanced compensation pursuant to judgment dated 06.05.1992 of Ld. Additional District Judge, Ambala. The Complainant paid enhanced compensation as determined pursuant to a judgment/award dated 06.05.1992 passed by the District Judge, Ambala. The Complainant sent legal notice dated 28.5.1997 to Opposite Parties seeking clarification of the demand dated 08.01.1997. The Complainant, vide letter dated 30.03.1999 requested the Opposite Parties to exclude the green belt of 30 meter width from the allotment of land and adjust/set off the cost thereof, which was not done by them. The Opposite Parties, vide letter dated 30.06.2000, raised further demand of Rs.10,75,812/-. The Complainant deposited the said amount alongwith interest on 18.08.2000 under protest. The Opposite Parties, vide letter dated 15.01.2008, raised another demand of enhanced compensation of Rs.1,28,00,999/-, which was also paid by the Complainant under protest. The Complainant filed Case No:CA-59/2008 before the MRTP, which was dismissed for want of jurisdiction.

9. Regarding limitation, Learned Counsel for the Opposite Parties submitted that the payments were made from 1994 to 2006 and the Complaint was filed in 2011 after expiry of limitation period. It is admitted by the Opposite Party that the last payment was made by the Complainant in 2006. The Opposite Parties, vide letter dated 18.06.1997, imposed penalty of 10% on the demand dated 08.01.1997. The Complainant, vide letter dated 30.03.1999, requested the Opposite Parties to exclude the green belt of 30 meter width from the allotment of land and adjust/set off the cost thereof. Thereafter, the Opposite Parties, vide letter dated 30.06.2000 raised further demand of Rs.10,75,812/-. The Complainant deposited the said amount alongwith interest on 18.08.2000 under protest. Thereafter, the Opposite Parties made 3rd demand on 16.10.2005 and fourth demand on 15.01.2008 towards enhanced compensation. The Complainant paid a sum of Rs.1,28,00,999/- on 11.02.2008, under protest. From the aforesaid sequence of the demands and the payments, we find that the cause of action was continuing upto 18.08.2000. The Complainant filed Case No. CA-59 of 2008 in the MRTP, which was dismissed, vide order dated 03.05.2011. The Complainant filed the instant Consumer Complaint on 11.11.2011, which is well within the limitation period in view of Section 12 of the Limitation Act, 1963. Case relied by the learned Counsel for the Opposite Parties in **Ms. Agriculture Industries** (*supra*) is, therefore, not applicable.

The Opposite Parties also challenged the Complaint on the ground that the Complaint involved complicated questions of fact which cannot be decided by the Consumer Forum in summary proceedings.

“It cannot be denied that Fora at the national level, the State level and at the district level have been constituted under the Act with the avowed object of

providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the Fora established under the Act. These Fora have been established and conferred with the jurisdiction in addition to the conventional Courts. The principal object sought to be achieved by establishing such Fora is to relieve the conventional Courts of their burden which is ever-increasing with the mounting arrears and whereat the disposal is delayed because of the technicalities. Merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any Forum under the Act to the person aggrieved.”

10. From the facts and circumstances of the case, it is seen that there are no complicated questions of facts and law involved in this case, which cannot be decided by this Commission. Moreover, as held above by Hon’ble Supreme Court, involvement of some questions of fact and law cannot be a ground for shutting the doors of any Forum under the Act to the person aggrieved. This Commission is, thus, competent to adjudicate the instant Consumer Complaints.

11. The Opposite Parties further challenged the Complaint stating that the dispute between the Parties could only be referred to Arbitration was not sustainable. It is settled law that the remedy under the Consumer Protection Act, 1986 is an additional remedy and is not curtailed due to any specific law. The jurisdiction under Arbitration, therefore, does not curtail the power of this Commission. Hon’ble Supreme Court in *M/s Emaar MGF Land Limited vs. Aftab Singh – I (2019) CPJ 5 (SC)*, laid down that Arbitration clause in the Agreement does not bar the jurisdiction of the Consumer Fora to entertain the Complaint. Also, as per Section 3 of the Consumer Protection Act, 1986, it is provided that “*the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force*”. Hence, the objection raised by the Learned Counsel for the Opposite Parties that the Arbitration clause bars this Commission from entertaining the Complaint is rejected.

12. Regarding payment of enhanced compensation as well as interest thereon, the Complainant alleged that the demands made by the Opposite Parties were illegal and arbitrary. In this regard, it is relevant to go through the terms & conditions of the allotment letter dated 08.07.1991. Clauses 9 and 10 are relevant, which reads as follows: -

“9. *The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the land acquisition Act, shall also be payable proportionately, as determined by the authority. The additional price determined shall be paid within thirty days of the demand.*

10. *In case the installment is not paid by the 10th of the month in which it falls due (or in case the additional price is not paid within time) the estate officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act.”*

Clause 9 of the allotment letter clearly stipulated that any enhancement in the cost of land awarded the competent authority under the Land Acquisition Act, shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within thirty days of the demand. The allotment letter itself empowered the Opposite Parties to charge enhanced from the allottee.

Further, Learned Counsel for the Opposite Parties relied on Section 2 (b) of Haryana Urban Development Authority (Disposal of Land & Buildings) Regulations, 1978 which reads as follows: -

“Section 2 (b) of the Regulations provides that ‘ADDITIONAL PRICE’ and ‘ADDITIONAL PREMIUM’ means such sum of money as may be determined by the Chief Administrator in respect of the sale of land by allotment, which may become payable by the transferee with respect “to land or building sold to him in a sector on account of the enhancement of compensation of any land in the same sector by the Court on a reference made under section 18 of the Land Acquisition Act, 1984, and the amount of cost incurred in respect of reference.”

Section 2 (b) of Haryana Urban Development Authority (Disposal of Land & Buildings) Regulations, 1978 provides that additional price and additional premium would mean such sum of money as may be determined by the Chief Administrator, which may become payable by the allottee on account of enhancement by the Court. The Opposite Parties charged enhanced compensation from the Complainant under Clauses 9 & 10 of the allotment letter dated 08.07.1991 as well as Section 2 (b) of Haryana Urban Development Authority (Disposal of Land & Buildings) Regulations, 1978.

Further, Punjab & Haryana High Court in **Pankaj Aggarwal & Ors vs State Of Haryana & Anr decided on 19 December, 2015** held as follows: -

“The conditions in the letter of allotment and the agreement clearly empower the Corporation to recover the enhanced amount of compensation and also the matters incidental or connected thereto. Therefore, the demand of interest is within the prerogative of the respondent-Corporation. As per the petitioners themselves, the respondent-Corporation works on no profit-no loss basis. If such is the situation, who is to pay interest payable on the amount of compensation? The burden has to be passed to the allottees, such as the present petitioners.”

The aforesaid judgment also clearly stated that the conditions of the allotment letter and the agreement empowered the Corporation to recover the enhanced amount of compensation from the allottee. In the case on hand, the terms & conditions of the allotment letter empowered the Opposite Parties to recover the enhanced compensation from the allottee (Complainant). Hon’ble Punjab & Haryana High Court also held that the allottee has to bear the burden of the enhanced compensation.

In view of clause 9 & 10 of the allotment letter, Section 2 (b) of the Regulations as well as the judgment in *Pankaj Aggarwal* (supra), the Opposite Party was well within its right to recover the enhanced compensation, awarded by the Court, from the Complainants. As per Clause 9 of the allotment letter, the payment of enhanced compensation was to be made by the Complainants within 30 days. As the Complainant did not pay the amount within thirty days, the Opposite Parties charged interest on the payable amount.

13. The Complainant alleged that they made a request to the Opposite Parties to exclude the green belt of 30 meter width from the allotment of land and adjust/set off the cost thereof, as was done in the allotment of land to Telecom Department Group Housing Plot. The Opposite Parties submitted that the case of the Complainant could not be equated with the case of Telecom Department. Telecom Department had not made any construction and plot size of the department was reduced by taking back the green belt area. As per the approved plan, the Complainant was required to cover 35% of the site and remaining 65% area was to be kept as open space. As per sanctioned plan, the Complainant was using a part of this strip for open car parking. Since the area is part and parcel of the total site and is being utilized by the Complainant, they cannot claim exemption from payment of its cost and enhanced compensation. The Complainant has not produced any evidence to show that 30 meter strip was not part and parcel of the approved sanctioned plan and they were not using part of it for open car parking. The Opposite Parties were, thus, justified in charging cost for the entire land.

14. In view of the above, we find that the Opposite Parties charged enhanced compensation from the Complainant in view of Clauses 9 & 10 of the allotment letter dated 08.07.1991 as well as Section 2 (b) of Haryana Urban Development Authority (Disposal of Land & Buildings) Regulations, 1978. Further, the demands made by the Opposite Parties were pursuant to the judgment dated 06.05.1992 of Ld. Additional District Judge, Ambala. Moreover, the allotment letter also provided that the Opposite Parties can charge the enhanced compensation from the allottees. The Complainant failed to point out any illegality or arbitrariness in the impugned demands. The Complaint is devoid of merit and is dismissed with no order as to costs.

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C. VISWANATH
PRESIDING MEMBER

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SUBHASH CHANDRA
MEMBER