

SIKANDER BAKSHI
ADVOCATE

ROOM NO. 19 New Bar Complex,
Punjab & Haryana High Court,
Chandigarh.

FLAT NO.10, G.H.-3, M.D.C.,
SEC.-5, PANCHKULA.
R-0172-2555807,
M-9465218529
e-mail sikander_adv@yahoo.co.in

REF. No. SPL-1/11

DATE: 17/11/11

To

Estate Officer,
HUDA, Gurgaon-II.

Subject :- **Complaint case 277/10**
Ashish Vs HUDA
Plot No. 482-P, Sector-39, Gurgaon.

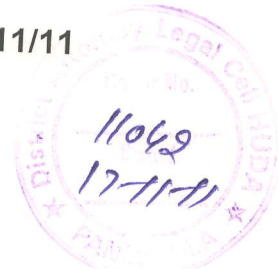
Sir,

This is to further inform you that the Ld. DCF, Panchkula vide order dated 31/10/11, dismissed the complaint filed by the complainant. The objections regarding jurisdiction has been finally decided by Ld. DCF, Panchkula in favour of HUDA. This order may be cited in the replies to be filed by HUDA before Ld. DCF Panchkula in all urban estates other than Panchkula. Please find enclosed herewith a certified copy of order dated 31/10/11 and kindly release my counsel fee at the earliest. Fee bill is also enclosed for taking necessary action please.

The fee bill in the revision filed before Hon'ble State Commission Haryana is also pending and inspite of supplying the certified copy of order and giving several reminders the same has not yet been released for the reasons best known to your office. Kindly take urgent necessary action at your end and release my fee bills pending before your office. A copy of pending bills is again attached herewith for taking urgent necessary action.

Sikander Bakshi
SIKANDER BAKSHI
Advocate.

✓ Copy to C.A., HUDA, Panchkula.



AA
HA (N.S.)
17/11

Copy by
17/11

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BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, PANCHKULA.

Consumer Complaint No. 277/2010
 Date of Institution: 09/12/2010.
 Date of Decision: 31/10/2011



Ashish son of Sh. Rajinder Parsad resident of House No. 817 Sector 8 Panchkula

....Complainant

Versus

1. The Urban Development Authority . Panchkula through its Chief Administrator.
2. Estate Officer, Haryana Urban Development Authority, Gurgaon.

....Opposite Parties

COMPLAINT UNDER SECTION 12 OF THE CONSUMER PROTECTION ACT, 1986.

Coram: Mr. Ashok Jain, President,
 Mr. S.P.Singh, Member

For the Parties: Mr. H.K.Sharma, Advocate for the complainant.
 Mr. Sikander Bakshi, Advocate. counsel for the OPs.

ORDER

Ashok Kumar Jain President

1. The complainant has filed the present complaint under present complaint u/s 12 of the Consumer Protection Act, 1986, against the Ops with the averments that residential plot No. 482-P Sector 39 Gurgaon measuring 7.5 x 18 meter i.e. 135 sq.meter was allotted to complainant vide allotment letter No. 1187 (Annexure C-1) dated 23/03/1995 for tentative price of Rs. 1,85,185/- on free hold basis. The complainant had paid the entire amount against the plot to OP no.2 . In this regard Op no.2 has issued No Dues Certificate vide letter No. 435 (Annexure C-2) dated 03/09/2009. During the month of July 2010 when the complainant visited the site for taking possession , he found the plot in a zig-zag shape / Trapezium shape/ Unsymmetrical shape & situated in very low laying area. In this regard copy of report prepared by JE HYDA duly signed by OP No.2 is enclosed as (Annexure C-3) .The case of the complainant is that in such type of plot construction of building is not possible. It is submitted that OP No.1 vide letter (Annexure C-4) dated 6/1/2010 had issued instructions regarding allotment of alternative plot. Further the CA HUDA (Town Planning Wing) Panchkula vide letter (Annexure C-5) dated 6/5/2003 had issued directions /policy to All Administrators HUDA ,All Sr. Town Planners /All Distt Town Planners / All

ATTESTED

L. Kesh Yadav
 8/11/2011

Superintendent

(Signature)
 8/11/2011

27



Estate Offers HUDA that the proposal for regularization of plot boundaries shall be examined on merits after receipt of written request from the allottee. Accordingly, the complainant vide letter (Annexure C-6) dated 9/7/2010 has requested the Hon'ble CM Haryana -Cum Chairman HUDA as well as to OP no.1 for allotment of alternative plot as per policy framed, but no information has been received so far. A copy of above letter was also sent to the Chief Town Planner HUDA by the complainant for necessary action, who in turn vide letter (Annexure C-7) dated 2/8/2010 has sent the representation of the complainant to CA HUDA i.e. OP No.1 for necessary action. However no alternative plot has been allotted by the Ops to the complainant so far. It is alleged that this act and conduct of the Ops amount to deficiency in service. Hence, this complaint.

2. Upon notice, the Ops appeared and filed their joint written statement wherein specific preliminary objections were taken that this Forum has no territorial jurisdiction to try & decide the present complaint in view of the decision of Hon'ble Supreme Court in case titled as Sonic Surgical Vs National Insurance Company Ltd and as such the complaint is not maintainable. It is prayed that preliminary objection qua jurisdiction be decided first & if the same is decided against the Ops then they may be given reasonable time to get preferring appeal/ revision against the same. In reply on merits, it was asserted that as per para no.2 of the allotment letter it is clear that "The approximate area of the plot/ building are given below subject to the adjustment in accordance with the actual measurement at the time of delivery of possession". It is submitted that terms & conditions of allotment letter were very much accepted by the complainant & the same cannot be agitated at any stage. It is further submitted that Copy of letter dated 9/7/2010 was endorsed to E.O II HUDA Gurgaon i.e. OP No.2 to the Assistant-39. However, the said matter has not been dealt by the dealing Assistant /clerk for which he is proceeded against separately. There is no deficiency in service & prayed for dismissal of the complainant.
3. The complainant also filed replication controverting the allegations made in the written statement.
4. Since the OP No.1 & 2 in their written statement took a specific preliminary objection with respect to the territorial jurisdiction of this Forum to entertain & decide the present complaint with the prayer to decide this issue first, as such the case is fixed ^{nday for} for consideration on preliminary issue qua territorial jurisdiction by the Ops.
5. We have heard learned counsel for the parties and have gone through the case file carefully and minutely.
6. The Ld. Counsel for Ops contended that this Forum has no territorial jurisdiction to entertain & decide the present complaint. It is contended that complainant was allotted disputed plot from EO HUDA Gurgaon i.e. Op

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L. K. Yadav

8-11-2011

Superintendent

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28

No.2 vide allotment letter (Ex C-1) dated 23/03/1995 .According to the complainant after clearing dues in respect of the disputed plot when he visited the site in July 2010 ,he found the plot in a zig-zag shape / Trapezium shape/ Unsymmetrical shape & situated in very low laying area . The complainant vide letter (Annexure C-6) dated 9/7/2010 has requested OP no.1 for allotment of alternative plot as per policy framed , who in turn endorsed the copy of letter to OP No.2 for necessary action .However the same has not been dealt with by the dealing Assistant /clerk of Op no.2 .Thus the whole cause of action arose at Gurgaon .No part of the same arose at Panchkula. It is contended that in case the complainant is found entitled for alternative plot , the same is also to be allotted by Op no.2. Thus OP No.1 had not to play any role in allotment of alternative and as such, OP No.1 has been made un- necessarily party , just to create jurisdiction . On the other hand , it has been contended on behalf of the complainant that since the Head office of OP no.1 & 2 is located at Panchkula , therefore , in view of section 11 of the consumer protection Act 1986 (as amended up to date) the complainant has filed the present complaint before Distt. Forum at Panchkula , which is very much maintainable .

7. Undisputedly , the complainant was allotted disputed plot in Urban Estate Gurgaon by EO HUDA Gurgaon i.e. OP No.2 .The alternative plot, if the complainant found deserves is also to be allotted by OP No.2, but he filed the instant complaint before the Distt Consumer Forum, Panchkula alleging deficiency in service against the opposite parties . Thus this Forum at Panchkula has got no jurisdiction to entertain & decide the complainant because the cause of action had accrued to the complainant at Gurgaon where he was allotted disputed plot & deficiency in service , if any as alleged by the complainant , can only be at Gurgoan. Recently the Hon'ble Supreme Court has decided such a controversy vide its order dated 20/10/2009 in case tiled as **Sonic Surgical Vs National Insurance Company Ltd. 2010 CTJ -2 (Supreme Court (CP)** wherein it was held that :-

“ Incidence of fire in the appellant's godown at Ambala –Complainant claiming compensation from the respondent allowed by the State Commission Union Territory , Chandigarh- National Commission set aside the said order accepting the appeal of the respondent on the ground that the State Commission , Union Territory had no jurisdiction to entertain & adjudicate the complaint – Hence the present appeal- Admittedly no cause of action arose at Ambala & the claim for compensation also made at Ambala – Cause of action arose in 1999 & the complaint regarding the same file in 2000- Amendment to Section (17 (2) not to apply as the amended Section came into force w.e.f 15/3/2003, Contention that the respondent –insurance company having a branch



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L. K. S. Chaudhary
8-11-2011
Superintendent

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office at Chandigarh , the complainant could have been filed in Chandigarh under the amended Section 17 (2) rejected as unacceptable- It would have led to absurd consequences of bench hunting , meaning thereby that even if a cause of action has arisen in Ambala, then too the complainant can file a complaint in Tamil Nadu or Guwahti or any where in India – Cause of action having arisen at Ambala, the State Commission, Haryana along to have jurisdiction to entertain the complaint- Impugned order of the National Commission agreed with – Appeal dismissed “

In para Nos 3 & 4 of the above said judgment, the Hon'ble Supreme Court has held that :

“ 3.....On appeal , the NCDRC allowed the appeal of the respondent herein of the Act, but such departure on the ground that the Consumer Commission at Chandigarh had no jurisdiction to entertain & adjudicate the complaint. We are in agreement with the view taken by the NCDRC “

“4.....In our opinion , no part of the cause of action arose at Chandigarh . It is well settled that the expression 'Cause of action' means that bundle of facts which gives rise to a right or liability .In the present case admittedly the fire broke in the godown of the appellant at Ambala . Thus , no part of the cause of action arose in Chandigarh “

In Para No.9 and 10 of the above judgment . the Hon'ble Supreme Court has held that :

“9.....It will lead to absurd consequences and lead to bench hunting . In our opinion , the expression ‘ branch office’ in the amended Section 17 (2) would mean that the branch office where the cause of action has arisen . No doubt this would be departing from the plain & literal words of Section 17 (2) (b) of the Act , but such departure is sometimes necessary (as it is in this case) to avoid absurdity .

10. In the present case , since the cause of action arose at Ambala , the State Consumer Redressal Commission Haryana alone will have jurisdiction to entertain the complaint”

8. The learned counsel for complaint contended that the aforesaid ruling does not applicable to the facts of the present case as in the present complaint , the complainant is claiming jurisdiction of this Forum as the Head office of OP no. 1 & 2 is situated at Panchkula which governs & control the total affairs /administration of HUDA in the State of Haryana including Distt. Faridabad . In support of his contention, the complaint placed reliance on ruling title as HUDA Vs RP Chawla -1997 (2) CPC-94 decided on 31/3/1997 by SCDRC Haryana , HUDA Vs Ramji Dass – 2001 (2) CPC-391 , decided by Hon,ble SCDRC UT Chandigarh on 14/9/2001 . Harinder Singh Vs M/s

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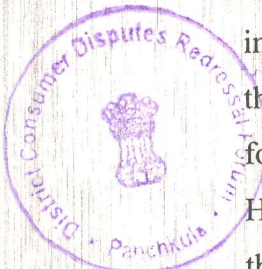
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8-11-201
Superintendent

Seasky Cargo & Travels Pvt Ltd & others -2006 (2) CPC -489 decided by Hon'ble SCDRC Punjab on 1/3/2006 .

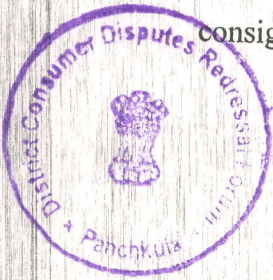
9. However we find that in the present case , the complainant was allotted plot in Urban Estate Gurgaon by Op no.2 i.e EO HUDA Gurgaon . The grouse of the complainant is that after clearing its dues on vist of site in July 2010 he found in a zig-zag shape / Trapezium shape/ Unsymmetrical shape & that as per HUDA policies he is entitled for allotment of alternative plot ..Undisputedly the alternative plot has to be allotted by EO HUDA Gurgaon i.e OP No.2 , to whom the Op no.1 endorsed the representation of complainant (Annexure C-6) dated 9/7/2010 for allotment of alternative plot . Thus it is clear that cause of action arose at Gurgaon .
10. Recently our very own State Commission by relying upon judgment **Sonic Surgical Vs National Insurance Company Ltd. (supra)** allowed the appeals against the orders passed by Distt Consumer Forum Panchkula allowing the complaints filed by complainants against HUDA where the plot is situated in some other District & complaint filed at Panchkula claiming jurisdiction that head office of the HUDA is situated at Panchkula . Reliance be placed on **HUDA Vs Jitender Pal** FA No. 1655 of 2003 decided on 29/08/2011 . **HUDA Vs Smt. Manmohan Kohli** FA No. 175 of 2005 decided on 16/08/2011 . **EO HUDA & others Vs Rajan Kumar** - FA No.1368 of 2006 decided on 21/01/2011 , **Rajiv Kumar Vs EO HUDA etc.** - FA No. 845 of 2005 decided on 8/11/2010 . **HUDA vs Smt. Nirmal Sood** - FA No. 1453 of 2005 decided on 31/05/2010. The finding given by the Hon'ble State Commission in Nirmal Sood case (Supra) regarding territorial jurisdiction has been confirmed by the Hon'ble National Commission in **Nirmal Sood vs HUDA** - RP No. 3337 of 2010 decided on 4/5/2011 . After going through above discussion , we find that facts of the instant case are fully attracted to the Sonic Surgical case (Supra) & other authorities of our own State Commission , cited above . In view of the fact mentioned above, the cause of action accrued to the complainant at Gurgaon & therefore the complainant should have been filed at Gurgaon & not at Panchkula .
11. As a sequel to our aforesaid discussion, we find force in this objection raised by the Opposite parties & accordingly hold that this forum has got no territorial jurisdiction to try & entertain the present complaint .
12. For the reasons stated above we dismiss the present complainant being not maintainable abinitio.
13. However, in terms of Judgment of the Hon'ble Supreme Court in **Laxmi Engineering Works Vs PSG Industries Institute (1995) 3 SCC -583**, the complainant may seek exemption /condonation of the time spent before this Forum, to seek remedy before the Forum/Court having competent jurisdiction ,if so advised .

ATTESTED

[Signature]
8-11-2011
Superintendent



In peculiar circumstances of the case, both the parties are left to bear their own costs. A copy of this order be communicated to both the parties free of costs and file be consigned to the record room after due compliance.



Announced
8/11/2011

SPI

C Ashish (new sum))
President

SPI

S. P. Singh

Secretary

Certified to be true Copy

[Signature] 8/11/2011
SUPERINTENDENT
District Consumer Disputes
Redressal Forum, Panchkula

NO

8/11/2011

Date of Preparation :- 8/11/2011

Date of Despatch :- 9/11/2011

Date of Delivery :- 9/11/2011