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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-20977-2024 (O&M).
Date of Decision: 23.09.2024.**

**THE CHIEF ADMINISTRATOR, HARYANA SAHARI VIKAS
PRADHIKARAN AND ANOTHER**

... Petitioners

Versus

**THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AND ANOTHER**

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Harmanjot Singh Gill, Advocate,
for the petitioner-HSVP.

VINOD S. BHARDWAJ, J. (ORAL)

CM-15725-CWP-2024

Application is allowed as prayed for.

Annexure P-9 dated 15.11.2021 is taken on record.

The Registry is directed to tag the same at an appropriate place.

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**Main case**

Challenge in the present petition is to the order dated 13.12.2022 (Annexure P-7), passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'NCDRC') passed in R.P. No.1022 of 2022 whereby the order dated 07.01.2022 passed by the State Consumer Disputes Redressal Commission (hereinafter referred to as 'SCDRC') in F.A No.373 of 2021 and the order dated 27.10.2021 passed by the District Consumer Disputes Redressal Commission (hereinafter referred to as 'DCDRC') have been upheld and the revision petition has been dismissed.

2 Briefly summarised, the facts of the present case, as are relevant for examining the present controversy, are as under:-

“The petitioner--Haryana Shahari Vikas Pradhikaran formerly known as (Haryana Urban Development Authority as it was then) (hereinafter referred to as 'HSVP') had invited application for allotment of residential plots. In response thereto, the predecessor-in-interest of the respondent-consumer applied and was successful in allotment. Residential Plot No. 87 in Sector 21C III, Faridabad measuring a total area of 469.50 Sq. Mtrs was allotted in the name of Sujana Ram vide Allotment Memo No. 635 dated 02.03.1996 for a tentative price ₹7,20,720/-. The physical possession of the said plot, however, could not be delivered by the petitioner-HSVP to the

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allottee despite various request letters having been sent. On continuous persuasion, petitioner-HSVP informed that the said plot No.87, which was carved out by the HSVP, was in fact on a land which was notified as forest land and that on account of the orders passed by the Hon'ble Supreme Court of India, the physical possession of the said plot could not be handed over. The position continued even till 2021 when the complaint was finally filed before the DCDRC, Faridabad. The respondent No.2-complainant was a subsequent purchaser from original allottee Sujana Ram and the plot was transferred in her favour on 05.05.2004 after issuing all necessary clearances by the HSVP including permission to transfer. She came to know that certain plots numbers i.e. Plot No. 316 in Sector 21-A and Plot Nos. 334 and 355 measuring 250 sq. Yards each in Sector 31 were lying vacant and had not been allotted. Accordingly the complainant moved an application for exchange of the old Plot No.87, Sector 21 C III, Faridabad for Plot Nos. 334 and 335 in Sector, 31 Faridabad. She expressed her willingness to pay any differential excess amount to be paid, in the event of allotment of Plot Nos. 334 and 335 measuring 250 sq. Yards each in Sector 31, Faridabad. Repeated requests were made by the respondent No.2-complainant to the HSVP to deliver physical possession of the plot or to exchange the plot and to allot the

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alternative plots. On 05.07.2021, HSVP declined the above said request of the petitioner thus resulting in institution of the complaint under 322 of 2021 before DCDRC praying for the following reliefs:-

“a) issue the possession letter with regard to plot No. 316, Sector-21A, Faridabad or plot No. 334 & plot No.335, Faridabad measuring 250 sq. yards each in the name of the complainant and deliver the possession of the said plots to the complainant and the difference in the area of original plot and demanded plot may Kindly be settled and if the amount is excess then to receive the excess amount and if the area is less then to release the said amount with interest in favour of the complainant.

b) pay Rs. 5,00,000/- as compensation for causing mental agony and harassment.

c) to pay interest @ 18% p.a. on the amount already deposited by the complainant with the opposite parties from the date of allotment till the date of payment.

d) Any other relief which this Hon'ble Commission deems fit and proper also be awarded in favour of the complainant and against the opposite parties.

3 Upon receipt of notice, the petitioner HSVP chose not to file a written statement despite availing several opportunities. The defence of

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petitioner-HSVP was hence struck off vide order dated 14.09.2021. The case was thereafter proceeded on merits and on consideration of evidence led by the respondent No.2-complainant/allottee, the complaint in question was allowed and a direction was given to the petitioner-HSVP to give physical possession of plot No.316 of Sector 21 or Plot No.277 or 278 of Sector 31 in lieu of the plot No.87 of Sector 21-C-III lying vacant and without any litigation as per the exchange policy of the petitioner-HSVP applicable as on 22.09.2015. The petitioner-HSVP was also directed not to create any third party interest on the above noted plots. A cost of Rs.5,500/- towards mental agony and Rs.5,000/- towards litigation expenses were also awarded. The operative part of the award dated 27.10.2021 passed by DCDRC Faridabad reads thus:-

“9. After going through the evidence led by the complainant and the conduct of the opposite party, the Commission is of the opinion, the complaint is allowed with the direction to allot and give the physical possession to the complainant of the plot No. 316 of Sector-21 OR plot No. 277 or 278 of Sector-31 in lieu of the plot No. 87 of Sector-21C III, if lying vacant without litigation. As per the exchange policy of the HUDA vide Memo No. 9579/EO dated 22.09.2015, the complainants are entitled for an alternative plot in lieu of the originally allotted plot which was in acquired by the order of Ld. Supreme Court stating that it was found to have been carved out in the notified 'forest area'. The opposite party is also directed not to create third party interest the above noted plots and complaint is

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allowed with costs of Rs. 5500/- as causing mental tension and agony and Rs.5000/- as litigation expenses to the complainant. Opposite party is also directed to pay interest @ 12% p.a. on the respective dates of deposits till its realization. Compliance of this order be made within 30 days from the date of receipt of copy of order. Copy of this order be sent to the parties concerned free of costs.”

4 Aggrieved thereof, the petitioner-HSVP preferred an appeal before the SCDRC, Haryana, raising various objections including the objection with respect to the complaint being time barred and also that there was no provision in the Shehari Vikas Pradhikaran Act for exchange of a plot in favour of the subsequent allottee. First Appeal No.373 of 2021 was heard by the SCDRC and vide order dated 07.01.2022, the said appeal was also dismissed. The operative of the order reads thus:-

“13. Having considered the submissions made by the learned counsel for the appellants as well as respondent and after perusal of the original record summoned from the learned District Commission, Faridabad as well as appellate record and as it has been argued by the learned counsel for the parties that whatever the contentions they have raised may be considered for the disposal of the misc. application as well as the appeal on merits.

This commission is of the considered opinion that even if the complainant is subsequent allottee of plot No.87, Sector 21-C, III, Faridabad, she is being a senior citizen of the country

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have stepped into the shoes of the original allottee. The complainant had also deposited the amount as was directed from time to time by the good office of the Estate Officer, Fandabad. It was incumbent for the officials of the appellants that in the eventuality of passing an injunction order by the Hon'ble Apex Court of the land or due to the unavoidable circumstances, when it was not possible to deliver the physical possession of plot No.87. Sector 21-C,III, Faridabad, in that eventuality, the proper opportunity should have been afforded to the complainant to offer an alternative plot. It has also clear that there is a large number of correspondence taken place between the parties with that office of the Estate Officer, Faridabad but the just and genuine claim of the complainant was not accepted. It is quite pity that it is settled proposition of law even by the highest court of land and the Hon'ble National Commission that in case one particular plot has entered into a huge litigation or the physical possession due to certain reasons cannot be delivered, in that eventuality, an alternative plot can be allotted to a genuine allottee.

14. In the present case once the initial allotment was made in the year of 1996 and the present complainant is a subsequent allottee in the year of 2004 and she had been pushed to run from one pillar to other for a period of 18 years as nothing but is an abuse of process of law. It is definitely a case of deficiency and mal-trade practice on the part of the appellants.

15. It is not out of place to make a reference here that under the compelling circumstances, the complainant had to institute a consumer complaint titled as Darshna Sethi Vs. Haryana

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Sahari Vikas Pradhikaran Nigam and after having a large number of correspondence with the appellants, the complaint was allowed by the learned District Commission, Faridabad and even in the original consumer complaint, no written version or the written statement had been filed in spite of availing sufficient opportunities by the appellants to set up the defence, but, the reasons are best known as to why the written version or the written statement did not file. In the constraint circumstances, the learned District Commission Faridabad has struck off the defence of the present appellants and as such, it is absolutely case of no evidence. There is nothing cogent or convincing documents available on the record, which can refute the genuine claim of the complainant. The learned Presiding Officer of District commission after due appreciation of the facts, circumstances, the documents placed on the record and the settled proposition of law in various celebrated authorities have issued directions to the appellants to provide the alternate plot to the complainant and there is absolutely no scope to intervene and to set aside the order passed by the learned District Commission. Even for the Senior Citizens every court or the organ of the states and the central agencies are very liberal for the up-liftment of the senior citizens of the country. The various schemes have been formulated for their welfare and since the complainant had been facing the great hardship for the last more than 18 years, it is a case of abuse of powers at the hands of the officials or the offices of the appellants.

16. As a consequence thereof and with the above observation and discussion, this commission has considered the

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submissions made by the learned counsel for the appellants but have been found to be untenable without any force and merit and render no assistance. While concurring with the arguments advanced by the learned counsel for the applicant-complainant-respondent, the interim order passed by this Commission vide dated 23.12.2021 stands vacated with all intents and purposes and the appeal is also devoid of merits and stands dismissed.

17. The statutory amount of Rs.5250/- deposited at the time of the appeal be refunded to the appellants against proper receipt and identification in accordance with rules, after the expiry of period of appeal/revision, if any.”

5 Still feeling aggrieved, the petitioner-HSVP preferred a Revision Petition No.1022 of 2022, under Section 21 (b) of the Consumer Protection Act, 1986 impugning the above said order before the NCDRC. Vide its order dated 13.12.2022, the revision petition was also dismissed by the NCDRC. The operative part of the order passed by the NCDRC reads as under:-

“10. The undisputed facts of the case are that the Plot No. 87, Sector 21C – III, Faridabad was allotted to one, Sujana Ram S/o Shri Vinjya Ram vide Memo No. 635 dated 12.03.1996 and the possession of the Plot was handed over to him on 17.02.2004. The said plot was purchased from him by the Complainant in the year 2004 and she made a request to HSVP for transfer of the Plot in her name. She paid the entire

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consideration and the Plot in question was re-allotted in the name of the Complainant vide Memo No.16819 dated 05.05.2004. The Hon'ble Supreme Court in a PIL passed the stay order in respect of Forest Area. Since, the Plot in question was covered by the Forest Area the possession of the Plot could not be handed over to the Complainant by the HSVP. Subsequently, Complainant came to now that Plot No. 316 in Sector 21A and Plot Nos. 334 and 335 both admeasuring 250 sq. yards each in Sector 31 were lying vacant and accordingly, she requested the Petitioner HSVP to allot an alternative plot out of aforesaid plots to her in lieu of originally allotted plot but they did not pay any heed to her request. As rightly observed by the Fora below, numbers of time, the Complainant had approached the Petitioner and sent various letters to them for allotment of an alternative plot but they did not bother to redress the genuine grievance of the Complainant. With regard to the preliminary objection of the Petitioner HSVP that the Complainant being a subsequent purchaser is not entitled for an alternative plot and they cannot enter into the shoe of the original allottee, the Hon'ble Supreme Court in the case of "Laureate Buildwell Pvt. Ltd. vs. Charanjeet Singh" - 2021 SCC OnLine SC 479, has held that subsequent purchaser who takes over the obligation of the Original purchaser to pay the balance amount, would not per se excluded from the description of a Consumer and even in the absence of a privity of contract, a beneficiary of a Project/Service is a Consumer. Hence, the said contention has no leg to stand. Further, with regard to the contention of the HSVP that the complaint is barred by limitation, in catena of the judgments, the Hon'ble Supreme Court as well as this

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Commission has held that in the cases where possession of the allotted plot/flat has not been handed over to the Complainant there is always a recurring cause of action. In number of cases, the HSVP has allotted the alternative plot to similarly situated allottees/purchasers without holding a draw of lot and it is surprising in the present case why the HSVP has not allotted an alternative plot to the Complainant in the Sectors requested by her in lieu of plot allotted in Sector 21 CIII, Faridabad which was acquired under the Forest Land. In my considered opinion, under these circumstances, the HSVP was duty bound to make an attempt for allotment of an alternative plot to the Complainant at their own instead of making the Complainant to run from pillar to post for the last 17 years. I fully agree with the view taken by the Fora below that the Complainant is entitled for an alternative plot in lieu of the plot originally allotted to her. In view of the concurrent finding of the facts rendered by the Fora below that there was deficiency in service on the part of the HSVP, I do not find any material irregularity or jurisdictional error in the impugned order passed by the State Commission warranting interference u/s 21(b) of the Act.

11. Moreover, the Revisional Jurisdiction of this Commission is extremely limited as has been held by the Hon'ble Supreme Court in 'Sunil Kumar Maity vs. State Bank of India & Anr.' [Civil Appeal No. 432 / 2022 decided on 21.01.2022] by observing as under:-

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only

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in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

12. For the reasons stated hereinabove, I do not find any good ground to interfere with the well-reasoned Impugned Order dated 07.01.2022 passed by the State Commission which is based on proper and correct appreciation of the facts and evidence adduced by the Parties. Consequently, the present Revision Petition fails and is hereby dismissed. Keeping in view the facts and circumstances of the case, there shall be no Order as to costs.”

6 The petitioner-HSVP thereafter preferred a Special Leave Petition (Civil) Diary No.22063 of 2023 before the Hon’ble Supreme Court which was withdrawn with liberty to approach the High Court for an appropriate relief. Hence, the present petition.

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7 Learned counsel for the petitioner-HSVP has reiterated the arguments in relation to the complaint being time barred and also that the policy did not entitle exchange of the plot in favour of the subsequent purchaser and that such a provision was available only with respect to and in favour of the original allottee or the LRs of the original allottee. He, however, fairly informs that the said policy has now been modified by the petitioner-HSVP and now even a subsequent purchaser is entitled to seek an exchange of the plot. He, however, contends that a direction for allotment of the specific plot could not have been issued by the DCDRC.

8 No other argument has been raised.

9 I have heard learned counsel appearing for the respective parties and have also gone through the documents available on record.

10 I find that the objection raised on behalf of the petitioner-HSVP against the impugned orders of the Consumer Fora fail to convince this Court about any illegality in the order passed concurrently not only by the DCDRC but also in appeal by the SCDRC and the revision petition by the NCDRC. The undisputed facts which emerge from the entire chronology of facts are that plot No.87 in Sector 21 C-III, Faridabad measuring 469.50 Sq. meters was allotted to the original allottee Sujana Ram on 02.03.1996 and despite a lapse of more than 28 years, the physical possession of the same could not be delivered. The respondent No.2-complainant was the subsequent purchaser by a valid transfer in her favour on 18.03.2004, after obtaining necessary permission and NOC from the

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petitioner-HSVP. Notwithstanding that the said transfer having been approved by the petitioner-HSVP, the possession of the plot in question could not be delivered and it was the constant stand of the petitioner-HSVP that the physical possession of plot No.87 could not be offered since that plot had been carved out on a forest area. The default was hence solely attributable to the petitioner-HSVP in carving out a plot over a land that fall in the forest area and where no permission could have been granted or residential plots could have been allotted. Instead of taking responsibility of the lapse committed by it in failing to deliver physical possession of the plot despite accepting the entire allotment price of the plot, the petitioner-HSVP, rather chose to sleep over the matter and offer no respite. The allottee had to run from pillar to post for a period of more than 28 years in a bid to seek possession of the plot. Surprisingly, in a ministerial manner and without making any attempt to resolve the complication as well as ensuring delivery of possession, the request submitted by the respondent No.2-complainant for an alternative plot, was declined by them mechanically under the pretext of the policy, without taking into consideration that the lapses/defects were entirely attributable to the petitioner-HSVP itself. Aggrieved the allottee had to approach the Consumer Commissions and had to contest her right up to the NCDRC. The petitioner-HSVP still chose to approach the Hon'ble Supreme Court and thereafter, sought withdrawal of the SLP with liberty to approach this Court. Hence, the legal battle has unnecessarily and illogically been extended by the petitioner-HSVP for the allottee despite

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knowing completely well that the fault was entirely on them and that the allottee has been suffering from no fault of hers.

11 A specific question has also been put to the counsel for the petitioner-HSVP as to whether the plot in question that has been ordered to be allotted has any other advantage as compared to the plot No.87 that was allotted to the respondent No.2-complainant such as preferential location or being situated on any major sectoral of road. He fairly submits that there is no such difference so far as the site of plot No.87 that had been originally allotted to the consumer vis-à-vis the plot that has now been ordered to be allotted is concerned.

12 Now adverting to the argument as regards the application having been filed being time barred. Undeniably, the petitioner-HSVP was under an obligation to offer the physical possession of the plot especially when it has received the entire sale consideration in respect thereto. It is also not in dispute that at no point of time prior to 05.07.2021, any letter was sent by the petitioner-HSVP conveying cancellation of the plot or its denial or refusal in offering possession or an alternative plot. Such a communication was sent only after repeated requests made by the respondent No.2-complainant and even in 2021. The complaint in question was filed immediately thereafter.

13 In any case the prayer for delivery of possession is a recurring cause of action for an allottee. Even otherwise, limitation in present dispute is a mixed question of law and fact and the respondent was required to lead

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evidence to deny the date of refusal sent by the petitioner-HSVP, however, it chose not to file its reply before the District Consumer Disputes Redressal Commission, despite opportunities due to which the defence of the petitioner-HSVP was closed by an order of the Court. No challenge was made to the said order for seeking any liberty to file the reply before the DCDRC. I find that the argument of the claim being time barred is hence not substantiated. The complaint in question had been filed within the period of limitation from the date of communication of the order rejecting the application seeking exchange of the plot by the petitioner-HSVP.

14 Adverting to the next argument as to whether a specific plot could have been ordered to be allotted by the DCDRC, I am of the opinion that ordinarily such an argument may have some ground, however, in the peculiar circumstances of the present case where there is no difference in so far as the value or the site and parameters of the plot in question are concerned, I find that such a plea is merely a ploy to delay the relief to the respondent-allottee and to aggravate the situation.

15 I find that the conduct of the petitioner-HSVP in escalating the hardships of the allottee, who is not at any fault and has been made to suffer purely on account of the policy of the petitioner-HSVP itself, cannot be permitted. I find that the present petition before this Court is not only in violation of the State legal policy but is also malicious and is not intended to further the interests of the allottees, who are being entangled into unwarranted litigation.

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16 The present writ petition is accordingly dismissed. A further cost of Rs.50,000/- is imposed upon the petitioner-HSVP for filing a frivolous petition and not rectifying the process and remedying the errors committed by them repeatedly and over a period of 28 years. Let this cost be deposited with the PGI Poor Patients' Welfare Fund, Chandigarh. The cost be recovered from the officers who are found responsible and have unnecessarily compelled the respondent No.2-complainant to face the litigation that has been foisted upon her unwarrantedly.

17 In the event, the possession of the plot as ordered by the consumer Commissions, is not delivered within a period of 03 months of the receipt of certified copy of this order, the respondent No.2-complainant shall be entitled to interest @ 6% per annum on the amount already deposited by her as compensation for the prolonged delay in delivery possession along with an additional cost of Rs.1 lakh with the PGI Poor Patients' Welfare Fund, Chandigarh, to be recovered from the officer who is negligent in enforcing the above said order.

September 23, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No