NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9646 OF 2013

Sudha Gupta ....Appellant

Versus

DLF Ltd. .....Respondent

J U D G M E N T

Sanjiv Khanna, J.

1. Appellant Sudha Gupta, who appears in-person in the present appeal under Section 53T of the Competition Act, 2002 read with Section 55 of the repealed Monopolies and Restrictive Trade Practices Act, 1969 impugns order dated 8th March, 2013 passed by the Competition Appellate Tribunal ("Appellate Tribunal" for short) in Unfair Trade Practices Enquiry No. 117 of 1996.

2 M/s DLF Universal Ltd., sometimes also described as M/s DLF Ltd., is the first respondent and has contested the appeal. Kamlesh Bali and Manish Bali who were 2nd and 3rd respondents before the Appellate Tribunal and in this

appeal as originally filed, were later deleted from the array of parties on an application filed by the appellant which was allowed vide the order in chamber on 8th March, 2016.

3. By the impugned order dated 8th March, 2013, the Appellate Tribunal has directed the first respondent to refund Rs.3,34,695/- (Rupees three lakhs thirty-four thousand six hundred ninety-five) along with interest @ 9% per annum, *inter alia*, accepting the plea of the first respondent that they were entitled to forfeit Rs.1,55,105/- (Rupees one lakh fifty- five thousand one hundred five) from Rs.4,89,800/- (Rupees four lakhs eighty-nine thousand eight hundred) paid by the appellant towards the price of the plot.

4. The appellant is aggrieved as the Appellate Tribunal has rejected her prayers for (a) possession and registration of the sale deed of Plot No.1225, DLF Qutab Enclave, Phase IV, Gurgaon ("the plot" for short) on the payment of balance sale price and (b) compensation of Rs.1,00,000/- (Rupees one lakh) for pecuniary loss and immense mental agony suffered by her.

5. Prayer in the nature of specific performance was rejected by the Appellate Tribunal relying upon the judgment of this Court in ***Ghaziabad Development Authority vs. Ved Prakash Aggarwal (2008) 7 SCC 686***. In terms of this decision, prayer for specific performance, i.e. possession and registration of the sale deed cannot be granted under the repealed Monopolies and Restrictive Trade Practices Act, with the Appellate Tribunal assuming the powers of a civil court.

6. We would now discuss the facts of the present case in brief. The appellant had paid Rs.1,00,800/- (Rupees one lakh eight hundred) with the application for allotment of the plot on 3rd October, 1991 to the first respondent. Subsequently, the Plot Buyer's Agreement dated 7th January, 1992 was executed for the plot admeasuring 298.98 sq. meters at the rate of Rs.2093/- per sq. meter. As per the agreement, the appellant was also liable to pay External Development Charges of Rs.46,464/- (Rupees forty-six thousand four hundred sixty-four) at the rate of Rs.155.40 per sq. meter., Rs.71,516/- (Rupees seventy-one thousand five hundred sixteen) towards Preferential

Location Charges, Contingency Deposit of Rs.7,176/- (Rupees seven thousand one hundred seventy-six), Interest Free Refundable Service & Maintenance Security of Rs.18,000/- (Rupees eighteen thousand) in addition to the interest of Rs.14,195/- (Rupees fourteen thousand one-hundred ninety-five) under the two years and six months instalment plan opted by her. The total amount, therefore, payable by the appellant was Rs.8,83,916.14/- (Rupees eight lakhs eighty-three thousand nine hundred sixteen and fourteen paisa).

7. As per the appellant, the total amount payable was Rs.8,11,600/- (Rupees eight lakhs eleven-thousand six hundred). The appellant had disputed the liability to pay Rs.71,516/- (Rupees seventy-one thousand five hundred sixteen) on account of Preferential Location Charges, though the mandate to make this payment was specified in the Plot Buyer's Agreement.

8. Appellant had paid Rs.4,89,800/- (Rupees four lakhs eighty-nine thousand eight hundred) in all, with first payment of Rs.1,00,800/- (Rupees one lakh eight hundred) on 3rd December, 1991 when she had made an application

for allotment of plot. The balance payment of Rs.3,89,000/- (Rupees three lakhs eighty-nine thousand) was as per the following details:

Sr.No.	Date	Amount
1.	3/12/1991	1,20,000
2.	13/1/1992	60,000
3.	22/2/1992	52,000
4.	3/4/1992	82,000
5.	4/9/1992	75,000
	TOTAL	**3,89,000**

Subsequently, the appellant had defaulted in making payment of the instalments. The defaults were accepted by the appellant in her communications dated 17th August, 1992, 27th August, 1992 and 21st December, 1992. Even her letter dated 14th January, 1993 accepts defaults in payment. The allotment was cancelled by the first respondent vide its letter dated 25th August, 1992 which cancellation was recalled and the allotment was restored on payment of Rs.75,000/- (Rupees seventy-five thousand) by the first respondent on 4th September, 1992 by way of a bank draft. The appellant, thereafter, had sent a cheque dated 15th January, 1993 for Rs.66,279/- (Rupees sixty-six thousand two-hundred seventy- nine), which cheque on representation had bounced. The appellant had vide her

letter dated 14th January, 1993 taken a false plea that the plot had not been demarcated and the cheque of Rs.66,279/- (Rupees sixty-six thousand two-hundred seventy-nine) should not be presented. Notwithstanding the defaults, the first respondent vide its letter dated 18th January 1993 as a special case had extended the time of payment upto 30th January, 1993 subject to payment of interest. This letter is elaborate and negates the assertions of the appellant and highlights her defaults. In spite of indulgence shown, the appellant had defaulted and did not pay the overdue amounts.

9. The first respondent had by the letter dated 2nd June 1993 cancelled the allotment. The letter had also stated that the amount due and payable by the appellant including interest in January 1993 was Rs.1,28,796/- (Rupees one lakh twenty-eight thousand seven-hundred ninety-six). The letter had enclosed refund cheque of Rs.3,34,695/- (Rupees three lakhs thirty-four thousand six-hundred ninety-five) after deducting 'earnest money' of Rs.1,55,105/- (Rupees one lakh fifty-five thousand one-hundred five) which was forfeited in terms of Clause 10 of the agreement. The

aforesaid letter with the cheque addressed to the appellant was received back unserved with the remark 'unclaimed'. The first respondent had, thereafter, sent the said letter without the cheque, under certificate of posting on 24th June, 1993. Another letter dated 29th June, 1993 along with the cheque sent as Registered A.D. post was also received back with the remark 'unclaimed'. Yet another letter under certificate of posting was issued by the first respondent on 19th July, 1993 informing that the refund cheque issued to her had returned back and the same could be collected from the office of the first respondent. The first respondent has placed on record these and other communications which were sent under the registered post as well as certificate of posting and vide telegrams on different dates between 2nd June, 1993 till 2nd April, 1994.

10. The appellant had thereupon on 3rd January, 1994 written a letter to the first respondent enclosing therewith a cheque of Rs.54,636/- (Rupees fifty-four thousand six-hundred thirty-six) to which response was sent by the first respondent on 5th January, 1994 stating that the allotment had already been cancelled due to non-payment of the

outstanding amount and the earnest money had been forfeited and the cheque of Rs.54,636/- (Rupees fifty-four thousand six-hundred thirty-six) sent by her was returned. Subsequently, the appellant had prayed for withdrawal of cancellation of plot and restoration of the allotment. By letter dated 22nd June, 1994, the first respondent informed the appellant that they had already transferred the plot to another customer. Thereupon, the appellant vide her letter dated 27th June, 1994 conceded to the transfer of the plot but had protested against forfeiture of Rs.1,55,105/- (Rupees one lakh fifty-five thousand one-hundred five) and had demanded that the entire payment of Rs.4,89,800/- (Rupees four lakhs eighty-nine thousand eight hundred) along with interest should be refunded. The claim for 'mesne profits' in case the plot was transferred and re-sold to another person was also made. This letter by the appellant indicates that she had withdrawn and given up her claim for allotment of the plot and had pressed for refund of the amount deposited with interest and 'mesne profits'.

11. Pursuant to cancellation of the allotment by the first respondent vide its letter dated 2nd June, 1993, the first respondent had entered into an agreement dated 23rd September, 1993 to sell the plot to the deleted 2nd and 3rd respondents. The appellant had raised an issue and questioned the genuineness and authenticity of the application for allotment made by the deleted respondents pointing out the cuttings and corrections in the application form. It was highlighted that initially the plot number mentioned in the application was 1218 and not the plot in dispute, i.e. plot no.1225 and there were also a number of corrections and over-writings including the correction at serial no.8 in the box 'for office use only' and that the two dates i.e. 14.7.1993 and 20.7.1993 stand recorded in the box. We are not impressed with the argument. Deleted respondent Nos. 2 and 3 had paid Rs.1,50,000/- (Rupees one lakh fifty thousand) and Rs.50,000/-(Rupees fifty thousand) as booking amount vide bank drafts dated 14th July, 1993 and 19th July, 1993. The first respondent had explained that the deleted 2nd and 3rd respondents had initially opted for plot no.1218 but had subsequently opted

for an 'Executive Home' constructed on the plot. This statement of the first respondent is palpably and *ex facie* correct for the change of plot was to the detriment of the deleted 2nd and 3rd Respondent as the Appellate Tribunal had passed an interim order thereby staying the creation of any third-party interest in the plot. In view of the interim order, inspite of substantial payments by the deleted respondent Nos. 2 & 3 nearing to 95% of the agreed price of Rs.17,73,616/- (Rupees seventeen lakhs seventy-three thousand six-hundred sixteen), they could not be given physical possession of the property i.e. the constructed house. After about 20 years and upon the impugned order on 8th March, 2013 being passed, the sale/conveyance deed in their favour was registered on 17th May, 2013. The appellant has also challenged the sale/conveyance deed on the ground that the deleted 2nd and 3rd respondents were not present in India on the date when the document was registered. The first respondent has submitted that the deleted respondent Nos. 2 and 3 were non-residents and had executed the documents in April, 2013 and that the sale deed was presented for registration by the vendor i.e. the

first respondent through its duly authorised representative. The vendor i.e. the first respondent through its duly authorised representative and the two witnesses were present on the date of registration. The deleted 2nd respondent had signed the sale/conveyance deed for self and as attorney of the deleted 3rd respondent. Photographs of the deleted 2nd and 3rd respondents were affixed. Even otherwise the law requires acceptance by the vendee. Signature of the vendee on the sale/conveyance deed is not mandatory ***(see Aloka Bose vs. Parmatma Devi, (2009) 2 SCC 582).*** Signature of the vendor(s) and witnesses are admitted by the appellant. Acceptance is apparent. Thus, the plot stood transferred to the deleted respondent Nos. 2 & 3. Further, 2nd and 3rd respondents who had acquired ownership of the plot pursuant to sale deed executed by the first respondent on 17th May, 2013 are not parties to the present appeal having been deleted from the array of parties. In this backdrop, we are unable to grant the appellant relief in the nature of possession and registration of the sale deed of the plot.

12. It would be relevant here to state that after the impugned order, the appellant had also filed a complaint under Section 11 and 12 of the Consumer Protection Act, 1986, which complaint was dismissed by Consumer Disputes Redressal Forum vide its order dated 14th September, 2017 for various grounds and reasons including limitation and the order passed by Appellate Tribunal. Apparently, the appellant has made criminal complaints pursuant to which FIRs have been registered all pertaining to the transaction.

13. To deal with the question of refund of money, interest and mesne profits and forfeiture of Rs. 1,55,105/- (Rupees one lakh fifty-five thousand one hundred five), it would have been pertinent to peruse the instalment plan/schedule as agreed between the appellant and the first respondent, which was supposedly and annexure to the Plot Buyer's agreement dated 7th January, 1992. Neither the appellant nor the first respondent have placed on record the instalment schedule inspite of the direction given by this Court [Coram: Arun Mishra and Mohan M. Shantanagoudar, JJ.] vide order dated 24th October, 2017 to the first respondent to place all the

documents on record. The appellant states that she does not have a copy as the same was not furnished to her. This is disputed by the first respondent, who however should have placed the details/schedule of payment of instalments as was directed. We have no hesitation in observing that the first respondent was anxious to cancel the allotment as the prices had substantially increased which is apparent from the agreement between the first respondent and the deleted 2nd and 3rd respondent of over Rs.17,00,000/- (Rupees seventeen lakhs). No doubt this figure includes cost of construction, albeit the first respondent could have produced better details/breakup or similar plot buyer's agreements with third parties to establish the market price of the plot on the date of cancellation. This evidence and material has been withheld and adverse inference has accordingly been drawn by us. Therefore, we would hold that the forfeiture of Rs. 1,55,105/- (Rupees one lakh fifty-five thousand one hundred five) by the first respondent was not correct and in accordance with the law laid down by this Court in ***Kailash Nath Associates vs. DDA and Another (2015) 4 SCC 136.***

14. Having examined the above aspects, it is clear to us that there had been faults and lapses by both sides. On one hand, the appellant was a persistent defaulter who had failed to make overdue payments in spite of written communication(s) for nearly 9 months after the last payment was made on 4th September, 1992 till the allotment was cancelled on 2nd June, 1993. Further, Cheque for Rs. 66,279/- (Rupee sixty-six thousand two-hundred seventy-nine) issued by her in January, 1993 had bounced. She had clearly failed to respond to the letters written to her in June, 1993. Per contra, the agreement entered into between the first respondent and the deleted 2nd and 3rd respondents in September 1993 for the same plot with construction over it was for a substantially higher amount than the amount which was agreed by the first respondent with the appellant. Yet the amount of Rs.1,55,105/- (Rupees one lakh fifty-five thousand one hundred five) was forfeited. It is beyond doubt that the first respondent had not suffered any loss or damage.

15. Moreover, the issues which would arise in the present case related to unfair trade practices and whether the terms

and conditions in the agreement to sell/allotment agreement were valid and good. These aspects were not gone into and examined primarily because the appellant did not have proper legal guidance and assistance.

16. For deciding the rate of interest, we have noticed that the appellant was liable to pay interest @ 18% per annum on reducing balance of the price of the plot and External Development Charges along with each instalment. Further, interest @ 20% per annum was liable to be paid on the delayed payments. The first respondent had pointed out to us that they had sought to refund and repay Rs. 3,34,695/- (Rupees three lakhs thirty-four thousand six-hundred ninety-five) along with interest @ 9% after the impugned order was passed but the appellant had refused to accept the said payment. As noticed above, the first respondent had also sent a cheque along with a cancellation letter dated 2nd June, 1993 and had written letters to the appellant to collect it. However, Rs.1,55,105/- (Rupee one lakh fifty-five thousand one hundred five) was forfeited and has remained with the first respondent for more than 25 years from June, 1993 till today. Keeping in view the aforesaid facts and

circumstances, we deem that it would be just, fair and appropriate that the first respondent is directed to pay an amount of Rs. 30 lakhs (Rupees thirty lakhs) to the appellant within a period of six weeks from today and in case of failure, pay interest @ 12% per annum from the date of this order till the payment is made. In order to avoid any controversy, the said amount would be deposited by the first Respondent in the Registry of this Court within the time as mentioned above and the appellant would then be entitled to withdraw the same.

17. The appeal is accordingly disposed of. All pending applications are also disposed of. No order as to costs.

.....CJI
[RANJAN GOGOI]

.....,J.
[L.NAGESWARA RAO]

.....,J.
[SANJIV KHANNA]

New Delhi;
March 07, 2019