connection to their house from the Cable Operator. This shows that the BESCOM has allowed the Cable Operator to draw cable wire through the electric pole along with electric wire illegally. The BESCOM being an "Authority" is required to provide all safety measures to the consumers and it ought not to have allowed the Cable Operator to draw cable wire along with electric wire.

5. Sri N.S. Sanjay Gowda, learned Counsel appearing for the BESCOM, submitted that since the Complainants have not availed any service from the BESCOM, they cannot be considered as "Consumers", so far as BESCOM is concerned. It is not in dispute that electricity has been supplied by the BESCOM to the premises of the Complainant. It is also in evidence that cable wire was drawn through the electric pole along with electric wire. If the BESCOM had prevented the Cable Operator from drawing the cable wire through the electric pole along with electric wire, the incident could not have taken place. The BESCOM owes a duty to take all safety measures while supplying electricity to its consumers. In the instant case, failure on the part of the BESCOM in not preventing the Cable Operator from drawing cable wire along with the electric wire through the electric pole is a "Deficiency in Service". The Cable Operator has also violated the instructions issued by the BESCOM not to draw cable wire through electric poles. Therefore, in our view, both the Cable Operator and the BESCOM are jointly and severally liable to pay compensation to the Complainants.

6. In the instant case, the son of the Complainants who died due to electric shock was aged about 21 years. Therefore, the compensation awarded by the District Forum at Rs. 2,00,000/- is just and reasonable. In the said view of the matter, both the Appeals are liable to be dismissed.

7. In the result, we pass the following Order:

(1) The Appeals are dismissed.

(2) The OPs have deposited certain amounts in these Appeals before this Commission. Hence, the Office is directed to transfer the said amounts to the District Forum to enable the District Forum to pay the same to the Complainants after due notice to them. *Appeals dismissed*

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STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA: PANCHKULA

Before Mr. Justice R.C. Kathuria, President; Mr. Banarsi Dass and Mrs. Shakuntla Yadav, Members

First Appeal No. 2499 of 2005 Decided on 4.10.2007

Estate Officer, Haryana Urban Development Authority & Anr. *Appellant*

Versus

Ex.-Subedar Major Mahipal Singh *Respondent*

For the Appellants Mr. S.P. Singh, Advocate

For the Respondent None

Consumer Protection Act, 1986 – Sections 12 & 15 – Allotment – Forfeiture – Allowing the claim of complainant District Forum directed appellant/OP to refund amount of Rs. 63,785/- paid for allotment of plot and also Rs. 79,000/- spent on construction of shop with interest and cost of Rs. 10,000/- Impugned order not legally maintainable – District Forum had ignored the provision of Regulation 14 of Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 which provides that in case an allottee surrenders his plot, then 10% of deposited amount would be forfeited by HUDA – Complainant who had surrendered his shop, cannot back out of the term of agreement – As regards question of construction, it was nowhere provided that if shop is surrendered HUDA would pay the cost of construction – Impugned order set aside. (Paras 6-7)

Cases Referred :—

1. Haryana Urban Development Authority v. Consumer Disputes Redressal Commission, Haryana, 1996(1) C.P.C. 115
2. Lucknow Development Authority vs. M.K. Gupta, 1994(1) CPC 1 S.C.
3. Smt. Vijay Garg v. Haryana Urban Development Authority, 2000 HRR 89
4. Naresh Kumar Solanki v. Haryana Urban Development Authority, Civil Writ Petition No.13951/2003
5. H.U.D.A. v. Kewal Krishan Goel, 1996 HRR 478 S.C.

ORDER

Mr. Justice R.C. Kathuria, President - Challenge in this appeal is to the order dated 8.11.2005 passed by the District Consumer Disputes Redressal Forum, Yamuna Nagar at Jagadhri whereby while accepting the complaint of the respondent-complainant following direction has been given to the appellants-opposite parties:-

> "Resultantly, we allow the complaint of complainant and direct the respondents to refund the amount of Rs.63,785/- and also refund the amount of Rs.79,000/- spent by the complainant on construction of the shop as the respondents have failed to get the market rate of the construction as per their rules alongwith interest at the rate of 12% per annum from 30.9.2003 till realization and pay Rs. 10,000/- as mental agony, harassment and litigation expenses.

2. In order to focus the controversy involved in the present appeal the facts as can be gathered from the record have to be noticed at the outset. The complainant was allotted shop No.19 measuring 22.6875 Sq. Mtrs. (2.75' x 8.25') located in Shopping Centre No. 1, HUDA, Jagadhri on a tentative price of Rs.4,18,580/-. The complainant had deposited Rs. 41,850/- at the time of auction and Rs.62,775/- towards 15% of the sale price on 7.5.1999 in pursuance of the allotment letter bearing memo 2806 dated 12.4.1999. The balance amount was to be paid in instalments. In all the complainant deposited Rs.2,44,625/- upto 3.12.2002. The complainant had constructed a shop on the allotted plot at an expense of Rs.79,000/-. He started running his business in the said shop but resulted in loss to him. He closed the shop business and then vacated the shop and locked the same on 1.4.2003. Thereafter, he submitted an application dated 30.9.2003 for surrender of the plot to the opposite party No. 1 with the request to refund the deposited amount of Rs.2,44,625/-. The opposite party No. 1 required the complainant to submit an affidavit with regard to the receipt of Rs. 1,80,840/- on the assurance that the balance amount would be paid after some time and if the affidavit was not given, the amount would not be given to him. As the complainant was in need of money and under pressure of the opposite party No. 1, he submitted his affidavit. Thereafter, he was refunded Rs.1,80,840/- vide Cheque No.886665 dated 25.11.2003 after deducting Rs.63,785/-. The complainant approached the opposite parties with the request to refund the balance amount of Rs.63,785/- and also to pay Rs.79,000/- incurred on the construction of the shop but no action was taken by the opposite parties which forced him to file the present complaint seeking directions to the opposite parties to pay the above stated amounts alongwith interest @ 24% from 1.10.2003 till payment. In addition he claimed compensation of Rs.50,000/- on account of mental agony and harassment and Rs.2200/- as litigation expenses. The complaint was contested by the opposite parties. In the joint written statement filed a preliminary objection with regard to the cause of action and complaint being not maintainable were raised. It was also stated that in respect of the charges claimed with regard to the expenses of construction of the shop, the opposite parties were not liable to pay the same as per policy but the opposite parties had sent the matter to the Head Office for necessary approval and if the approval was received, the amount would be paid to the complainant. On merits, it was pleaded that after the allotment of the shop site to the complainant, he had failed to pay the

instalments amount for which five notices under Section 17(1) and 17(2) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act, 1977) bearing memo Nos.2614 dated 29.6.2001, 3720 dated 21.8.2001, 4706 dated 24.9.2002, 5820 dated 29.10.2002 and 1190 dated 13.3.2004 were issued to the complainant. It was further stated that the complainant had deposited Rs. 10,000/- on 7.11.2001; Rs.40,000/- on 11.1.2002 and Rs.90,000/- on 4.12.2002 but failed to deposit the balance amount. It was thereafter the complainant as per application dated 30.9.2003 surrendered the plot alongwith affidavit stating therein that he was ready to receive the less payment as per HUDA policy. Accepting the prayer made after retaining the amount of Rs.63,785/- as per HUDA policy, the balance amount was refunded to the complainant and accordingly it was prayed that the complaint merited dismissal. On the basis of the pleadings of the parties and evidence adduced on record, the District Forum accepted the complaint on the ground that the opposite parties had taken stand that with regard to the payment of the cost of construction of the shop the matter had been sent to the Head Office for necessary approval while maintaining that there were no rules to refund the amount of the construction to the complainant. This stand of the opposite parties, according to the District Forum, is self contradictory. Consequently, it was concluded that it was not a case of surrender of the built up booth, rather, it was a case of resumption of the plot and for that reason the complainant was entitled to the relief claimed. Accordingly, directions noticed above were issued by the District Forum in its order dated 8.11.2005. It is against the said order the appellants-opposite parties have come up in appeal.

3. Learned counsel representing the appellants-opposite parties has been heard at length. None has chosen to appear to argue the matter on behalf of the respondent-complainant.

4. Two fold submissions have been made by the learned counsel representing the appellants-opposite parties while assailing the order dated 8.11.2005 of the District Forum. Firstly, that the District Forum had no jurisdiction to entertain the complaint as the shop site was allotted to the complainant on the basis of public auction as per letter bearing memo No.2806 dated 12.4.1999. Secondly, that the opposite parties had rightly refunded Rs.1,80,840/- vide Cheque No.886665 dated 25.11.2003 after deducting Rs.63,785/- as per HUDA policy issued vide memo No.A-1-99/16145-61 dated 7.5.1999 and in view of that policy they had no liability to pay the price of the constructed portion of the shop as the complainant had voluntarily surrendered the plot and after having accepted the Cheque amount he had no locus standi to file the complaint. In support of the submission made reliance was placed by him on the cases mentioned hereinafter:

5. In case *Haryana Urban Development Authority Versus Consumer Disputes Redressal Commission, Haryana and Others*, 1996(1) C.P.C. 115, the facts were that the complainant had purchased the plot in dispute in public auction wherein taking notice of the fact that plot allotted in public auction, the writ petition was allowed and the complaint pending before the Consumer Disputes Redressal Commission, Haryana was quashed. For coming to this conclusion reliance was placed on Ashok Tayal and Others v. Delhi Development Authorities and Others, 1996(1) C.P.C. 114. The position of law in this regard stands well settled by the Hon'ble Supreme Court in case *Lucknow Development Authority vs. M.K. Gupta*, 111(1993) C.P.J. 7 (S.C) = 1994(1) CPC 1 S.C., wherein it was observed as under:-

> "A perusal of the definition of 'service' as it stood prior to 1993 would indicate that the word 'facility' was already there. Therefore, the legislature while amending the law in 1993 added the word in clause (d) to dispel any doubt that consumer in the Act would mean a person who not only hires but also avails any facility for consideration. It in fact indicates that these words were added more to clarify than to add something new."

It was also held that housing construction would fall within the definition of service even earlier to the amendment. It has been laid down in *Lucknow Development Authority vs. M.K. Gupta* (Supra) that when any statutory authority develops land or allots a site or constructs a house for the benefits of common man it is as much service as by a builder or contractor and its case would be covered in the clause as stood before the Amending Act, 1993. In view of the position explained in the above mentioned cases there is hardly any merit in the objection raised from the side of the appellant with regard that the District Forum has no jurisdiction to try the complaint. This stand taken from the side of the appellant is accordingly rejected.

6. Coming to the second submission it cannot be denied that the complainant has admitted that he suffered loss in the business and for that reason he closed the shop on 1.4.2003 and thereafter applied for surrender of the shop as per application dated 30.9.2003 to the opposite parties. The opposite parties accepted his request for surrender and for that reason refunded the amount of Rs. 1,80,540/- after deducting the amount of Rs.63,785/- under the policy of the opposite parties. The stand of the opposite parties in this regard is fully supported by the cases referred to by the learned counsel for the opposite parties during the course of arguments as in *Smt. Vijay Garg Vs. Haryana Urban Development Authority* 2001(3) RCR (C) 293 = 2000 HRR 89, the facts were that complainant had taken possession of the site and had paid one instalment. The balance price was not paid in accordance with the allotment letter. Final instalment had come due on the date when he had surrendered the plot. 50% of the amount deposited was deducted keeping in view the liability to pay the instalments with interest. Under these circumstances, it was held that the action of the opposite parties was neither ultravires of the Act and regulations nor arbitrary or capricious. It was further stated that the allottee having accepted the allotment, made some payment on instalment basis and even made a request for surrender, committed default on his part and the competent authority was justified while accepting the surrender in forfeiting the earnest money which had been deposited and not 10% of the amount deposited. Similar question has also arisen in Civil Writ Petition No.13951/2003 *Naresh Kumar Solanki Vs. Haryana Urban Development Authority*, wherein the facts were that the petitioner had expressed his inability to purchase the plot at the enhanced price and for that reason had chosen to surrender it. The respondents refunded the amount paid by the petitioner after making deduction of Rs.50069/- representing 10% of the total sale consideration. The action of the respondents was challenged on the ground that 10% of the deduction could be made only on the tentative price amounting to Rs.271092/- and not on account of enhanced price determined thereafter. The stand taken by the petitioner was rejected by coming to the conclusion that the demand had been made in accordance with the policy of the Haryana Urban Development Authority, which had come into being after allotment of the plot. It was further pointed out by the learned counsel for the appellants-opposite parties that earlier the same view has been taken by the Hon'ble Supreme Court of India in case *H.U.D.A. and another vs. Kewal Krishan Goel and others*, AIR 1996 S.C. 1981 = 1996 HRR 478 S.C.

7. The ratio of the above mentioned case would fully apply to the controversy raised in this case. In this case the opposite parties had deducted Rs.63,785/- in terms of the policy dated 7.5.1999 wherein it has been clearly specified that decision was taken that in case of a surrender of commercial/residential plot refund may be allowed after forfeiting equal to 10% of the total consideration amount, interest and other dues payable. Meaning thereby 10% of the total cost of the plot including penalty which shall be taken together, in terms of the Regulation No. 14 of the Haryana Urban Development (Disposal of Land and Building) Act, 1978. Therefore, the District Forum has not taken into account the legal position while accepting the

complaint in this regard. The directions of the District Forum requiring the appellant to refund the amount of Rs.63,785/- to the complainant alongwith interest cannot be sustained and are set aside.

8. The other controversy raised is with regard to the entitlement of the claim the cost of construction of the shop carried out by him on the shop site. No doubt, the opposite parties have stated in the written statement filed that the prayer made by the complainant in this regard had been referred to the higher authorities and if the decision was received from the higher authorities, the complainant would be paid the cost of the construction of the shop accordingly. Admittedly, in this case no such decision has been taken by the higher authorities of the opposite parties for permitting the complainant to claim Rs.79,000/- towards the cost of construction over the shop site. It cannot be ignored that the complainant is bound by the terms and conditions of the allotment letter No.2806 dated 12.4.1999 issued to him. It has nowhere been provided in the said agreement that the opposite parties shall pay the expenses for construction in case the complainant surrenders the shop site. Under the circumstances of the case the complainant is not entitled to receive any amount in respect of the construction carried out by him and the directions given in the order of the District Forum in this regard are set aside.

For the aforesaid reasons, while accepting the appeal the impugned order is set aside and the complaint is dismissed.

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Appeal accepted

STATE CONSUMER DISPUTES REDRESSAL COMMISSION ORISSA : CUTTACK

Before Mr. Justice R.K. Patra, President and Shri Subash Mahtab, Member

C.D. Appeal No. 517 of 2003 Decided on 3.6.2005

Branch Manager, New India Assurance Co. Ltd. *Appellant*

Versus

Sk. Karim Ahamad and another *Respondents*

For the Appellant Mr. N.N. Mishra, Advocate

For the Respondent No.1 Mr. P.K. Ray, Advocate

For the Respondent No.2 None

Consumer Protection Act, 1986 – Sections 14 & 15 – Medi claim policy – Claimant obtained a medi claim policy – He had to spend an amount of Rs. 11,175.16 paise on his treatment – This claim was repudiated on the ground that insured had pre-existing disease – Complainant had paid a sum of Rs. 1,66,662/- for renewed of policy – Collection of this amount proves renewal of policy – Ground of repudiation not sustainable – Order of District Forum accepting claim of Rs. 11,175.16 paise upheld. (Paras 6-7-8)

Case Referred :—

Eiman Krishna Bose v. United India Insurance Co., 2001(2) CPC 477 S.C.

ORDER

Mr. Justice R.K. Patra, President - The Branch Manager, New India Assurance Company Limited has filed this appeal challenging the validity of the order of the Rayagada District Forum directing him to pay the respondent no.1 the mediclaim amounting to Rs. 11,175.16 paise with costs of Rs.300/-.

2. The respondent no.1 filed the complaint for a direction to the appellant to pay him the mediclaim amount together with compensation for mental agony and litigation expenses. His case is that he felt severe pain in his abdomen and consulted the doctor - respondent no.2. On the advice of the doctor, he took admission at Sanjibini Medicare, Bhubaneswar for treatment and on 22.10.2001, he was discharged from the hospital. He spent a sum of Rs. 11,175.16 paise towards his treatment in the hospital. He lodged a claim for the aforesaid amount which was repudiated by the appellant in letter dated 05.08.2002. Finding no other way, he filed the complaint.