

PETITIONER:
GHAZIABAD DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
SANCHAR VIHAR SAHKARI AVAS SAMITILT., GHAZIABAD

DATE OF JUDGMENT: 10/05/1996

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KURDUKAR S.P. (J)

CITATION:
1996 AIR 2021 1996 SCALE (4)497

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NO-7439 OF 1995

Sanchar Vihar Sahkari Avas Samiti
Ltd., Ghaziabad

V.

Ghaziabad Development Authority,
Ghaziabad

O R D E R

S.P. KURDUKAR, J.

These two appeals can be disposed of by this common order since they arise out of a judgment and order dated May 19, 1995 in Original Petition No.345 of 1993 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'National Commission').

2. Civil Appeal No.7199 of 1995 is filed by Ghaziabad Development Authority through its Vice Chairman whereas Civil Appeal No.7439 of 1995 is filed by Sanchar Vihar Sahkari Avas Samiti Ltd., Ghaziabad (hereinafter referred to as the 'Complainant').

3. The complainant is the society company, comprising of about 200 persons as its members. They have been allotted the plots under the scheme called G.D.A.'s Govind Puram Plots/Housing, Code: 537, 538 and 539. It is averred in the petition by the complainant that the Ghaziabad Development Authority has violated the terms and conditions inasmuch as failed to put them in possession of the plots within the stipulated period as prescribed in rule 15 of the brochure issued by the Ghaziabad Development Authority (hereinafter referred to as the 'Authority'). It is further complained that the Authority has charged interest in contravention and in violation of clause 3.50 of the brochure as these plots have been resistered under the Self Financing Scheme. It is further averred that the Authority has also charged penal interest for delayed payment of the instalments. The complainant, therefore, prayed that the Authority be directed to give possession of the duly developed plots

within three months from the date of order of this Commission; to refund the amount of Rs. 26,70,246.00 recovered by way of interest and penal interest on the instalments; and pay interest @ 18% per annum on the amount deposited with the Authority w.e.f. April 19,1992.

4. The Authority filed its reply to the aforesaid complaint and stated that the plots have been allotted to the members of the complainant on 16.3.1994. and the letters of allotment have been sent to them. As regards charging of interest, it is stated that clause 3.50 of brochure relates to flats and houses built under Self Financing Scheme and the said clause does not apply to the plots. The Authority relied upon column 9 in Annexure-1 of the brochure wherein it is provided that balance amount payable in six half yearly instalments with 15% interest. The Authority, therefore, prayed that the claim of the claimant is not sustainable and the complaint be dismissed.

5. The National Commission on perusal of the materials on record held that the complainant has made out no ground for awarding any interest or damages. The National Commission, however, opined that the Authority which has collected the interest amounting to RS. 25,37,669/- as indicated in the complaint had no authority to charge the same in view of clause 3.50 which relates to Self Financing Scheme. The National Commission further held that the Authority is within its rights to charge penal interest for the delay in payment of instalments. Consistent with these findings the National Commission by its order dated May 19, 1995 directed the Authority to refund the amount of interest charged @ 14% on the basis of column 9 of table 1 to the complainant. It is this order which is the subject matter of challenge in both these appeals.

6. Civil Appeal No,7199 of 1995 is filed by the Authority challenging the order of the National Commission to the extent it directs the Authority to return the amount of Rs.25,37,669.00 to the complainant. The complainant being partly aggrieved by the impugned order of Commission filed Civil Appeal No.7439 of 1995 whereby it permitted the Authority to charge penal interest on delayed payment of instalments.

7. Heard learned counsel for the parties and perused the materials on record. The entire controversy in both these appeals centers around the interpretation of clause 3.50 and column 9 of table 1, Annexure 1 of the brochure issued by the Authority. It is not disputed before us that the claimants' claim arise under the brochure and clause 3.50 and table 1 are part of the said brochure. The brochure is at Annexure-1 in Civil Appeal No. 7439 of 1995 filed by the complainant. Title of the brochure is Govind Puram Plots-be directed to give possession of the duly developed plots within three months from the date of order of this Commission; to refund the amount of Rs.26~70?246.00 recovered My way of interest and penal interest on the instalments; and pay interest 3 18% per annum on the amqunt deposited with the Authority w.e.f. April 19, 1992.

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8. Clause 3.44 deals with the instalments. It reads as under:

Balance cost of the Plots/Houses is payable if half yearly instalments, details of which are given in column 9 of table 1. More details will be intimated afterwards.

Clause 3.50- Interest payable on instalments:

No interest is payable on instalments under Self Financing Schemes and 15% interest is payable on instalments under the Purchase Scheme.

9. Table 1 annexed to the brochure sets out the various details in twelve columns. The relevant column in table 1 column 9 and it reads as under:

"balance amount payable in six half yearly instalments with 15% interest".

10. Mr. O.P. Rana, learned Senior counsel appearing in support of Civil Appeal filed by the Authority contended that the entire brochure has to be read together because this was an advertisement to the public at large and in terms of the brochure applications from the eligible persons

were invited for allotting houses/plots under the said scheme. When the applicants/members of the complainant applied to the Authority under the present scheme their applications were processed, scrutinized as per the brochure and were given the instalment facility as regards the payment of balance amount in six half yearly instalments in terms of column 9, table 1 annexed to the said brochure. Column 9 provides that if the facility of payment of balance amount in six half yearly instalments is being availed of, then applicants are required to pay interest @ 15% per annum on the balance amount of instalments. He urged that the members of the complainant did avail the facility of payment of balance amount in six half yearly instalments as per column 9 in table 1 and accordingly paid the interest at 15% per annum. Mr. O.P. Rana, therefore, urged that it is open to the complainant now to say that the amount of 26,70,246.00 paid to the Authority was not payable and the same be refunded.

11. Mr. Narender Kaushik, learned counsel appearing for the complainant, however, strongly relied upon the wording of clause 3.50 of the brochure and urged that the National Commission has committed no error in issuing direction to the Authority to refund the amount of Rs.25,37,669/- to the complainant.

12. In our opinion the National Commission was not justified in dissecting clause 3.50 and column 9 of table 1 of the brochure. The brochure published by the Authority has to be read together. It is true that clause 3.50 is silent about the liability of the applicant to pay the interest @ 15% on the balance amount but that clause in our opinion has to be read with table 1, column 9. This we say so because table 1 sets out the details relating to scheme, name and code, the property category, number of plots, approximate cost of the plots, payment plan/pay plan, registration amount, reservation amount, balance amount payment schedule etc. Since the complainant and its members have availed the facility of payment of balance amount in the Self Financing Scheme in six half yearly instalments and accordingly paid the interest with 15% per annum it would be too late in the day to say that in the Self Financing Scheme they were not liable to pay interest on the balance amount as claimed by the Authority. If the members of the complainant were not agreeable to the payment of interest on the balance amount 3.50 as prescribed in column 9 of table 1 then they ought to have objected to the liability to pay the interest provided therein and should have raised the dispute at the appropriate time. Having acquiesced in the mode of payment in instalments as per column 9 of table 1 in our opinion it would not be permissible for the complainant to raise a dispute as regards the payment of interest thereon. It is thus in our opinion that the finding of the Tribunal, "We have carefully perused the brochure and find that clause 3.50 makes no distinction between the houses and plots. In any case rule clearly states that no interest is payable on instalments under the Self Financing Scheme. Column 9 in the table in Annexure-I cannot override the rule as mentioned in clause 3.50. We are, therefore, of the view that the interest cannot be charged from those who have applied for the plots under Self Financing Scheme", is an erroneous interpretation of the brochure and in particular clause 3.50 and column 9 of table 1. The entire brochure is required to be read as a whole as it relates to various schemes of housing to the eligible persons. Table 1 which is part of brochure has to be read in consonance with clause 3.50. It would not be correct to read clause 3.50 in isolation to

column 9 of table 1 and to come to the conclusion that since no provision as regards the interest is made in clause 3.50, the Authority is not entitled to charge interest on the balance amount being paid in instalments. We are, therefore, of the opinion that clause 3.50 is required to be read in conjunction with column 9 of table 1 of the brochure. With respect we are unable to agree with the finding of the National Commission on this issue and accordingly the same is unsustainable.

13. Coming to the appeal filed by the complainant (Civil Appeal No.7439 of 1995) we are of the opinion that the National Commission has made no mistake in refusing interest or damages for delayed possession of the plots to the members of the complainant. During the course of arguments it was brought to our notice that the lands in question were the subject matter of land acquisition proceedings and because of the interim orders obtained by the land owners/claimants the authority was unable to finalize the acquisition proceedings and obtained possession thereof. During the course of hearing, learned counsel for the claimants produced in Court a zerox copy of the letter dated 19.2.1996 addressed to the individual plot holders. It is signed by the Joint Secretary, Ghaziabad Vikas Pardhitaran, Ghaziabad. Taken on record. We have perused the said letter and Mr. Rana, learned Senior counsel, appearing for the Authority assured the Court that every necessary steps will be taken by the Authority to hand over the possession of the plots to the applicants who have been allotted the plots under the present scheme. We hope the Authority will do the needful in terms of the letter dated 19.2.1996.

14. In the result the order passed by the National Commission to refund the amount of interest of Rs.25,27,669/- to the complainant is quashed and set aside and the Civil Appeal No.7199 of 1995 filed by Ghaziabad Development Authority is allowed. Civil Appeal No.7439 of 1995 filed by the complainant is dismissed. The parties are directed to bear their own costs.