

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6049 OF 2002

**GHAZIABAD
AUTHORITY**

DEVELOPMENT

.....APPELLANT(S)

Versus

RAMESH CHANDRA PANDIYA

.....RESPONDENT(S)

ORDER

The appellant allotted plot No. E-170 at Nehru Nagar measuring 167.44 sq. mt. vide allotment letter dated 5.6.1985, the price being Rs.37,842/-. The appellant send letters demanding payment of instalments which had become due and called upon the respondent to enter into a lease deed and take possession of the allotted site. The said allotment was cancelled on 16.3.1990 on the ground that the respondent had failed to take possession.

2. The respondent requested withdrawal of the cancellation and restoration of the allotment, vide letter dated 17.3.1990. By letter dated 19.4.1990, the appellant restored the allotment subject to payment of restoration fee and subject to the condition that it would be the responsibility of the respondent to take possession and he will not seek change of plot. The respondent, however, applied for allotment of alternative plot on 15.9.1994, alleging that the municipal authorities had laid a sewer line on the plot and that some

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part of the plot was also encroached. The appellant thereafter allotted an alternative plot (Plot No. 6/167, Vaishali) measuring 250.77 sq.mt. on 31.1.1996 and demanded payment of Rs.3,39,179/- after adjusting Rs.56,820/- which had been paid by the respondent towards the earlier allotment. The price charged for the Vaishali site is stated to be about Rs.1400/- per sq. mt.

3. Feeling aggrieved by the said demand, the respondent approached the State Consumer Disputes Redressal Commission, U.P. seeking a direction to the appellant to deliver the Vaishali plot at the original price of allotment which was about Rs.226/- per sq.mt. He also prayed for damages as also interest on the amount that was deposited by him for the Nehru Nagar plot. The State Commission by its order dated 29.3.2001 allowed the complaint. It directed the appellant to deliver the Vaishali plot measuring 250.77 sq.mt. at the original allotment price of Rs.226/- per sq.mt. It further directed the appellant to pay interest at 18% per annum on the amount deposited by the respondent towards the cost of Nehru Nagar plot. It also awarded Rs.38,000/- as compensation to respondent and also directed the appellant to pay the escalation towards the cost of construction of the house, worked out on the basis of cost of construction index in U.P. in the year 1985 and the year of delivery of possession.

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4. The said order was challenged by the appellant before the National Commission. The National Commission deleted the direction for payment of compensation of Rs.38,000/- and the direction that appellant should pay escalation in the cost of construction. It, however, affirmed the direction for delivery of Vaishali plot at the price of Rs.226/- and the direction for payment of interest at 18% per annum on the amount earlier deposited by the respondent in regard to Nehru Nagar plot. The National Commission relied on its earlier decision in *HUDA Vs. Darsh Kumar* (Revision Petition No.1197/1998 decided on 31.8.2001) for awarding interest at such rate. The said order is under challenge.

5. Appellant submitted that the decision of the National Commission in *Darsh Kumar* has been reversed by this Court in *Haryana Urban Development Authority Vs. Darsh Kumar & Ors.*, (2005) 9 SCC 449. The appellant also contended that the cancellation of allotment in the year 1990 was as a consequence of breaches and was in accordance with the terms of allotment and the Rules. It was pointed out that as per the terms of letter of allotment, instalments of Rs.3784.20 had to be paid by the respondent on 4.12.85, 4.6.86, 4.12.86, 4.6.87, 4.12.87, 4.6.88, 4.12.88 and 4.6.89, apart from executing the lease deed and taking possession. It was stated that the respondent did not enter into any lease agreement and

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take possession nor pay the instalments as and when they fell due in terms of the said allotment letter. It was contended that on account of the delay and breaches on the part of the respondent in executing the lease deed and taking possession, the plot was encroached subsequent to the date of allotment leading to unnecessary complications. It was submitted that the appellant was entitled to charge the prevailing price for the alternative plot.

6. The respondent denies the allegation of breach by him. According to the respondent, the allotted plot was under encroachment even when he went to inspect it and, therefore, he could not take possession. He also stated that possession of alternative site at Vaishali has been delivered to him in the year 2008, when he executed the order of the State Commission.

7. However, after the matter was argued for some time, the learned counsel for respondents on instructions, submitted that to put an end to the controversy, the respondent was willing to pay the prevailing allotment price of Rs.1400/- per sq. mt. in regard to the Vaishali plot and will not press the claim for interest on the amount paid for the earlier allotted site.

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8. Learned counsel for the appellant is not in a position to give any acceptable reason to deny the respondent the benefit of the alternative plot that has been delivered to him, when he is even willing to pay the price demanded. We are of the view that having regard to the factual background, neither party shall be entitled to interest.

9. We, therefore, allow this appeal in part and modify the order of the State Commission and National Commission as follows:

(a) The respondent will be entitled to retain plot No.6/167 at Vaishali measuring 250.77 sq.mt. allotted to him. Consequently, the appellant shall issue necessary letter of allotment/communication regularising and confirming the allotment.

(b) The cost of the said Vaishali plot shall be paid at the rate of Rs.1400/- per sq. mt. The price calculated at the said rate less the amount already deposited by the respondent shall be paid by the respondent to the appellant within three months.

(c) A sum of Rs.1,09,160/- is said to have been paid by the appellant to the respondent towards interest etc. in terms of

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the order of the Commission. The said amount shall also be refunded by the respondent to the appellant within three months in addition to the difference in price as a condition precedent for confirming the allotment.

(d) Failing such payments, the appellant shall be entitled to cancel the allotment and take back possession.

(e) The appellant will not be entitled to charge any interest on the balance amount due for the Vaishali plot. Nor will the respondent be entitled to any interest on the amount already paid. Neither party will be entitled to any amount by way of compensation or costs.

(f) On payment of amounts as aforesaid, the appellant will execute/issue the necessary documents of title in regard to the Vaishali plot at the cost of the respondent.

(g) Parties to bear their respective costs.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
January 29, 2009.

.....J.
(AFTAB ALAM)